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# Studies of the Old South

By the Present Day Students of a  
Virginia College



A Collection of Essays to Which Have Been Awarded  
During the Past Ten Years  
The Dr. George W. Bagby Prize  
of Hampden Sidney College  
For the Best Essay Written by an Undergraduate Upon  
Ante-Bellum Conditions in the South





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## VIRGINIA.

The roses nowhere bloom so white  
As in Virginia;  
The sunshine nowhere shines so bright  
As in Virginia;  
The birds sing nowhere quite so sweet  
And nowhere hearts so lightly beat,  
For Heaven and Earth both seem to meet  
Down in Virginia.

There is nowhere a land so fair  
As in Virginia;  
So full of song, so free of care,  
As in Virginia;  
And I believe that happy land  
The Lord's prepared for mortal man,  
Is built exactly on the plan  
Of Old Virginia.

The days are never quite so long  
As in Virginia;  
Nor quite as filled with happy song,  
As in Virginia;  
And when my time has come to die,  
Just take me back and let me lie  
Close where the James goes rolling by  
Down in Virginia.

W. H. L.  
Geo. Gordon Battle  
Apr. 28 '17

## PREFACE.

37 Wall Street, New York City.

The most fortunate day of my life was April 12, 1898, when I was married to Martha, the daughter of the late Dr. George W. Bagby, for many years the State Librarian of Virginia. From that event, so happy for me, I have taken a peculiar interest in her father's writings. Dr. Bagby's delightful essays relating chiefly to the Old Dominion of the time before the War between the States, breathe the very spirit of their period. It has been said that no one could comprehend the problems of Ireland who had not read with love and comprehension Mangan's beautiful poem "The Dark Rosaleen." It is equally true that no one can know and feel the true significance of the older Virginia civilization whose heart is not thrilled with sympathy and comprehension on turning the pages of "The Old Virginia Gentleman," "My Uncle Flatback's Plantation" and the other studies of Dr. Bagby. Thomas Nelson Page, Armistead C. Gordon and the other Virginia writers of recent days freely acknowledge that Dr. Bagby is *facile princeps* in his field.

The period of which he wrote and its civilization are rapidly growing dim in the memories of men. Soon they will be gone—like an unsubstantial pageant faded.

And so it is peculiarly suitable and important that the young men of the present time, whose memories still recall the impressions of those distant days, as gathered from stories by their fathers and mothers, by old nurses and servants and other conservers of tradition, should so far as possible record those impressions before they too have passed away. It is for this purpose that the printing of these essays has been undertaken. Although some of them

merit preservation by reason of their intrinsic merit, they are put forth rather for the purpose of preserving the thoughts and views of the younger generation of Southerners, and particularly of Virginians, concerning the past of their State and of their section. From this point of view the papers possess historical value.

Dated, October, 1916.

GEO. GORDON BATTLE.

**THE INFLUENCE OF THE EXTENSIVE GROWTH  
OF TOBACCO IN VIRGINIA IN THE  
SEVENTEENTH CENTURY.**



## **THE INFLUENCE OF THE EXTENSIVE GROWTH OF TOBACCO IN VIRGINIA IN THE SEVENTEENTH CENTURY.**

**By W. W. Grover—1906.**

Early Virginia has a history as original and as distinctively her own as has Assyria or Babylon or Rome. Virginia is the first born of many sister states in a newly discovered and unsubdued world, and she has had to solve, during the first few centuries of her existence, problems that were new and entirely her own.

This unprecedented character of her problems sprang, primarily, from the temperament of the people who made up the colony, and secondarily, from the condition of the soil which they tilled and the climate in which they lived. Many of her people came here because they were averse to worship as their brothers in England were accustomed to worship, and were sent here by companies whose purpose it was to establish a garden in this fertile soil of the Occident that would supply the markets of England more cheaply than they could be supplied by European markets.

While the first of these purposes was to some extent gained and the people were, in the main, allowed to worship God according to the dictates of their own consciences, the second purpose was a complete failure, due to the discovery of the Tobacco plant, which was found in extensive use among the North American Indians. Instead of using the fertile soil they found here for raising those products so much desired and sought after by the people of the home country, the settlers began the cultivation of tobacco. Probably no other plant has ever been discovered whose

use became so popular, and for which there was such a growing demand in so short a time.

Virginia was from the first the leading tobacco market in the world. Her wealth has been gained by it, and her social and economic relations have been greatly influenced by its production. Even her religious affairs were affected by it as is shown by the "Parsons Cause" which brought Patrick Henry to light. Some of these various influences were beneficial, while others were baneful. All the people were living in rural districts where agriculture was their only productive enterprise, and tobacco was their staple product.

Living as the people were, in a vast wilderness with no manufactories of artificial fertilizers, there was no scientific means for keeping the land in that high state of fertility in which they found it, and which was so necessary for the production of tobacco. The strength of the soil was used up so rapidly that, after a few years, the farmers found it necessary to clear away more land. Tobacco would flourish best only in the virgin soil.

For this reason, the forest, as vast as it was and as valuable as it would have become, fell victim to the deadly axe of the woodman. The mighty giants of the forest, that God had planted by His winds, and blessed by the sunshine and showers of many summers, and made hardy by the snows and storms of as many winters drooped their proud heads and fell before man as the destroying angel. Vast fields of the virgin soil were robbed of their natural vestments, and laid bare for the tobacco grower to take away their fertility while he shipped their products to foreign lands. New clearings were continually taking the place of these plots as they became unfertile and useless. Like an aggravated sore, these plots became more and more disagreeable to look at until hill and valley, in many places, were bare and rugged, and they continued to spread themselves, slowly, perhaps, but surely, until the whole country was left in this ugly condition.



This system resulted in each farmer's owning a large plantation that was poorly cultivated, because his more unproductive fields were abandoned to grow up in coarse grass or tall weeds or very probably in shrubs. The abundance of land and lumber very naturally created a prevalent spirit of wastefulness and neglect. It has been said that the whole country, even where it was most thickly settled, bore the appearance of a vast wilderness, only slightly changed by the axe and the hoe.

Tobacco found a ready market all over the world. Merchants in every port were calling for that strange weed that was coming from the new world across the seas. All goods that could not be produced on the plantation had to be imported from abroad. These two conditions brought it about that a system of barter and trade was set up. Traders would bring their cargoes to our shores and give them in exchange for our tobacco. Since tobacco was raised here, and only here, and since there was such a demand for it, this became the only product that was shipped to any extent.

The people became so used to trading a certain number of pounds of tobacco for any article they wanted, that they began to use tobacco as the unit of value. After a time this became the only regular medium of exchange. The tobacco barn came to be used very much as the modern American uses his purse. Goods were bought with tobacco, preachers were paid their salaries, and the lawyers and doctors were paid their fees in tobacco, and even the Governor of the Colony requested that his salary be paid in tobacco. When a Virginian went to England he would pay for his voyage in tobacco and take along an extra supply in order to defray his expenses while abroad.

So important was this crop that we find Alexander Brown saying in his "First Republic in America," "Tobacco was not the bane but really the preserver and support of the Colony."

True it is, that, as California was peopled by her gold

mines and the West is being populated to-day by its rich grain lands, so Virginia, to a great extent, was populated because of the adaptability of her soil to the production of tobacco. Commissioner J. B. Kellebrew in "Tobacco in Tennessee" was shown that Virginia with its cultured and refined men and women was made possible by the cultivation of tobacco. The generosity and hospitality for which Virginians have always been noted could only be developed by an idle class of wealthy and cultured people in rural districts. The prosperous condition of the country encouraged many of the better classes to migrate from England to live here as "Virginia Gentlemen."

The prominence of this product in the affairs of the people is also shown by the fact that the greater part of the legislation of that day was directed toward the regulation of the production and sale of tobacco. England, also, passed laws providing for the quality of tobacco that should be raised, and stating that it must be shipped only to England, in English ships, manned by English seamen.

Taxes were also laid on tobacco when it left Virginia as well as when it was delivered in England. These taxes, so arranged that all the burden lay on the planters, became so exorbitant that the planter, at one time, scarcely realized enough from a good crop to clothe his family. This condition is one of the paramount arguments used by Bacon in instigating the rebellion of 1676.

Although land was plentiful and fertile in the early years of Virginia, the plant could not be cultivated without a vast expenditure of time and labor. Even before the crop could be planted, the forest had to be cut down and the debris burned away. Therefore one of the leading problems of the day was the labor problem. This was a difficult problem to solve. At first the labor was done principally by a system of indented white servants, over whom the planters, as their masters, had complete control for a stated period of about ten years. Finally there came a day when it seemed that the problem would be imme-

diately solved in a most happy manner. Like the poisonous plant that bears a beautiful flower as the germ of a deadly fruit, this problem seemed to be opening up with a beautiful solution, when the Dutch ship appeared in the harbor with a cargo of African Savages, who the people thought could be readily trained to cut down the forest and cultivate the fields, with little expenditure to the planter. These people, they thought, would be totally under the planter's control for life and they could then live in luxury, commanding their servants to do whatever they would have them do, while, at the same time, they thought they would be uplifting the savage from that state of barbarism from which he had been taken.

I need only mention this when you, as you look back on history from the pinnacle of the present, will immediately recognize the evil fruit this pleasant flower has borne. You see the negro problem in its many variations, and in all its immensity as time has revealed it to us. This problem has occupied the minds of the brainiest and sturdiest of our men for a number of years, and it yet stands to-day unsolved and apparently as difficult of a satisfactory solution as from the very first. The Civil War has come and gone. Men have seen the errors of the slavery system and the lives of many of Virginia's bravest and noblest sons have been lost in this civil strife. Homesteads have been trampled under the foot of the warrior; families, bound together by ties of love have been torn asunder; and hearts have been left broken and bleeding. Yet we can not reach a solution.

That the growth of tobacco was the real cause that lay at the very foundation of all this can be readily shown. The peculiarity of tobacco in requiring the virgin soil for its production caused the large plantation that covered hundreds of acres; and the large plantation with the vast amount of labor necessary for the preparation of the land and cultivation of the crop created a great need for cheap and unskilled labor. Hence the negro was imported. Had

it not been for these conditions, the negro would never have secured a firm foot-hold in Virginia, for it was only this low grade of labor that he was fit for. No doubt there would have been a few negroes imported, but these would have been of little consequence, for there is no other crop the people would have raised that would have needed so much of this class of labor. From the abundance of land and the cheapness of labor, a system of very extensive cultivation resulted, in which the farmer of to-day is driven to cultivate a large tract of poor land at little profit. If the early planters had cleared less land and cultivated that more intensively, the farmer of to-day would have inherited smaller, but far more fertile farms from which he could produce as much, and probably more, with much less expense than he now has to bear.

The forests, too, in this day when so much lumber of a superior quality is needed, and is so difficult to obtain, would be of incalculable wealth to the country. The naturalist tells us that where there are few trees there is less rainfall than where the forests are well developed, and that the uneven distribution of rain in some portions of Virginia, at particular seasons, is due, in a large degree, to the scarcity of forest trees.

Many of the large private buildings, including factories and warehouses, have been built by money made from tobacco. Also a large part of the revenue that has gone into improvements and in costly public buildings has come from the tax on tobacco.

From this we are led to look into the origin and situation of the internal cities of the state. In "Henning's Statutes" we find that a law was passed providing for the establishment of a town in each county where the planters of that county could conveniently bring their tobacco. This accounts for the establishment of many of the towns and county seats of the state. The larger towns, however, grew up where there were superior shipping facilities along with easy accessibility from tobacco growing districts.

Richmond, Petersburg, Lynchburg and Danville are all in great tobacco sections, and we find that at first almost all their trade was in tobacco. The large manufacturing concerns in some of these cities to-day came after the cities were established, but even a great part of that manufacturing is now on tobacco.

The results of the cultivation of tobacco in Virginia in the Seventeenth Century have been so completely woven into the nexus of the affairs of the state that to overrate its influence would be difficult. These relations are so complicated and varied that I have been able to deal only with the most important phases of the subject in this paper.



## **SLAVERY AND ITS INFLUENCES IN THE OLD SOUTH.**

**By D. A. Haller—1908.**

The purpose of this article is neither to excuse slavery nor to condemn every form of the institution which existed in our Southland before the war, but rather to discuss different opinions on the subject held by men of the time, and to give their reasons for such opinions, attempting at the same time to point out any fallacies which may have existed in the arguments of either side. No particular section of the South is to be considered as being discussed more than another, the attempt throughout being to get in a condensed form an unbiased description of slavery from historical and sociological standpoints, the information to be gotten, as has been said, from the written figments of men who lived in the slavery era.

The foundation of slavery in the United States was laid probably in 1620, when a Dutch trading vessel landed a cargo of African negroes on our shores. The colonists, at the very outset, objected to the slaves being brought over, but as they continued to be forced upon them, they accepted them as one of the decrees of cruel, unrelenting fate, and decided to make the best of it. A cruel fate it was indeed, especially for their descendants. These negroes were simply a very low race of beings that were unloaded upon the settlers by unscrupulous traders and the duty of raising them to a higher plane of living now devolved upon the vainly protesting whites. It will be noticed that in the works of nearly all abolitionists this phase of the question has, however, been omitted. Could the question not be looked upon as a long term contract between the races and

forced upon each party, one side to become elevated intellectually, the other to receive for their services as teachers or instructors the products of the physical labors of the blacks minus the amount necessary to keep them well cared for? It seems that this was probably the real effect of the compact which undoubtedly did good and harm to both parties.

It was seen later on that abolition would be better for both parties involved, but then it was too late to effect this easily. When the value of the slaves had come to be over \$1,200,000,000 the plantation owners could not let the "contract" end, for it would mean financial ruin. They had expended their time in making capable and intelligent workmen of the negroes and now that their time for some return for their labor was at hand it was not at all peculiar that they wished to overlook the view of the inalienable, unalterable rights of all men to life and liberty as brought forth by the abolitionist; neither was it strange that as they viewed the question, they saw on the one side wealth, happiness (for both parties, as a general rule, were in comfortable positions) and freedom from all worry over changed conditions. On the other hand, they saw ruin, absolute and final, trouble between the races and necessarily a temporal retrogression in the land which they had done so much to improve and which they held so dear as the home of their patriotic fathers, who had fought under Washington, and which they cherished as the future home of their offspring.

This way of looking at the question was, however, not a universal one among the men of the South. Men like Clay of Kentucky, Calhoun of South Carolina, and Lee of Virginia, saw that slavery, so far as making one man and his descendants forever dependent upon another for his daily bread and even in some instances for his life, was not right and could never be made so. The way to remedy it was, however, not at hand, and as these men were not superhuman, they could see none and rather



spent their time in other matters defending to the best of their respective abilities, the claims of their native states when called upon to do so, and trying to improve the lot of those unfortunates held in slavery.

The people of the South had not been ignorant of the results in other countries where abolition had taken place, and as these results were far from the best, we see another very real cause for their not putting abolition to the test in their own land. The very first year after the complete emancipation of slaves in Jamaica the exports of sugar from that island fell off over 8,000 hogsheads. The abolitionists attempted to explain this by declaring that the size of the hogsheads had been changed and by saying that a free negro ate more sugar than a slave. Of the first statement there is no proof and the evidence to be had concerning it seems rather to point in the opposite direction. The second statement is nothing but an absurd supposition which contains no truth and which was simply a product of the imagination. These "explanations," as you will readily see, did little to encourage the Southerners to free their negroes. Then, too, what moral lesson could be gotten from men who, even if they did free their slaves, on the very next day forced the poor Chinese, at the mouths of cannon, to buy their death dealing opium. A noted abolitionist attempted to show that in countries where the slaves had been freed, even though the production was smaller than before, the producers gained more because the cost of production was lowered. This, too, was proved to be false and the Southerner still saw ruin written on the wall when he thought of freeing his slaves.

Probably one of the reasons why the South paid little attention to the cries of the abolitionists was because they were inconsistent. One of them, in a work on slavery, says: "The \$1,200,000,000 at which the South values its slaves is money extorted without right, and does not represent honest gain." A few years later the same man published a book in which he says: "It is right to apply force to

compel those to work who will not labor from rational motives." Does the comparison of two such statements inspire the readers with great confidence in the honesty and consistency of the author? No! We see the Southern slaveholder with the perplexing problem still before him and he has ability enough to see in the "reasonings" of his Northern brethren, who have no slaves to lose, a desire merely to experiment, to satisfy the whim, and not, as in a few cases, a desire to see the slaves emancipated simply because it is morally right.

Another reason why the men of the South did not listen to the arguments of the abolitionists was to quote one of the abolitionists themselves, because "they used *fierce, bitter, and abusive* language about any and every slaveholder."

A common supposition of the abolitionists was that slavery had degraded its subjects into brutes. The native African could not be degraded. Of the 50,000,000, inhabitants of Africa probably more than four-fifths were slaves. The master had over these the power of life and death, and, in fact, his slaves were often fattened, killed and eaten just as we do cattle. The religion of the masters was often worse than were their morals. Indeed, if such creatures ever reached the true level of simple brutality at all, is it not evident that they must have been elevated and not degraded to it? The truth is the abolitionist made the slave a brute or a martyr, just as it happened to suit the exigency of his argument.

We see then the general effect of slavery on the peace of mind of the Southerner was not at all soothing. It was a problem which had to be solved, yet there seemed to be no solution. If the slave holder freed his slaves he faced ruin. If he kept them he was continually abused by outsiders and probably troubled by his own conscience. He was even to see his own political rights fade away if he kept his slaves for "many people wouldn't vote with a nigger-owner." If no one would vote with him he could

not possibly win and then all laws would, if possible, be made to his disadvantage and to the advantage of other sections of the Union.

This trouble was not the only one either which was coming upon the Southern slave-holders. The South was falling behind the progressive North. There were no large factories south of Mason and Dixon's line and the slave by his wasteful ways, was soon to ruin the soil for agricultural purposes. The negroes were not skilled sufficiently to work in a mine or a factory, and they must needs have more time and labor expended on them before they would be fit for either of these duties. Then, when they were educated to perform these duties, what guarantee had the men of the South that no law was to be passed freeing them and thus letting their educators lose all the labor expended upon them? Then, too, if no law of the kind were passed, would they still be troubled by "talk" if they made the negro work for them and thus pay back the value of the efforts expended in teaching him? Slavery then began to produce a feeling of uneasiness all over the South. The slaves had been elevated from cannibals to their present status, but what was to be done next? They were ruining the land for future time, the paying good returns then. They were holding back the progress of the country, for they were not sufficiently skilled for any duties but those of day laborers of the lowest sort. Yet, calm unchangeable history held forth its true example of the fearful results of emancipation. The slaves could not be held with profit, and they could not be freed without loss. Truly the men who had profited by the slave trade had made their customers pay fancy prices for their goods.

Then, too, the negro was a cause of keeping free laborers out of the South. No respectable laborer would work by the side of a negro slave and of course naturally preferred the less arduous work in Northern factories to the labor in the hot cotton fields of the South for which the negro was peculiarly suited. Thus not only by their being

undesired as fellow workmen but by their hindering the building of factories in the South, the negroes kept out the most desirable class of workmen. This kept down the white population of the South, which, becoming relatively to that of the North smaller and smaller made the South's influence in governmental circles less felt each year. There was probably a way to make the negro count as much as a white man in voting—this was by getting his condition raised by educating him so that he could understand the principles of law. Then the question arises could this be done more quickly with the negro as a free man than as a slave? It is not at all probable, for the slaves came into closer contact with their masters, were better cared for and taught than they could have been otherwise. Then we can find no reason here why the Southerners should take the leap in the dark and risk their all.

A noted abolitionist seemed to think that the negro should be freed and allowed to follow the bent of his own will—if he wanted to elevate himself, let him do so, if not, then let him work two hours per day and live on in his childish fashion, taking no care for the morrow and caring not a mite whether he ate cornbread or cake, whether he relapsed into idolatry or lived and taught his children to live as Christians. This "solution"—as the author was pleased to term it—was undoubtedly absurd. In fact, no one except the originator ever considered it seriously for a moment. Yet there were thousands of equally foolish theories on the subject, and the proposers of each and every theory loudly berated the luckless slaveholder for not trying his scheme. Peace of mind must certainly have been an unknown quantity to the men who studied the question with a view to its speedy solution.

It was quite natural, too, that the brightest minds should be occupied with this, the most difficult question of the day. The natural result of this state of affairs is that the literary development of the South was checked, for a man must be bright indeed who can give time to two such

diverse subjects and have his thoughts amount to anything in either line.

Now, in the conclusion of our study, which we must call it for lack of a more appropriate name, what have we found? Slavery was exerting the greatest possible force against all improvement in the South—in fact, it was slowly but surely ruining it. In all probability we must conclude that slavery was elevating the negroes who were for the most part contentedly living and learning by the kind teachings of their masters. Granting, however, that the slaves were not helped by their masters, that they were ill-treated and that they were gradually retrograding or, on the other hand, affirming that they were gradually improving in all respects—in either case, looking at the side of the slaveholders themselves, can we say truthfully that holding slaves is not the greatest misfortune which can befall a race of people, that the slaveholders were not the ones who had suffered and were to suffer from its effects, that it was not a blight to Southern civilization? No, this has been proved over and over again. The slaveholders and not the negroes, then, should (and probably would, if they had come in the right way) have hailed the attempts to free the negroes as helping hands held to them—the people in distress.

Our feelings on the subjects must be only those of regret that the “contract” was ever forced upon either side and that it ever endured as long as it did. Its non-existence would have rendered unnecessary the sacrifice of many human lives in the great struggle which had slavery as its cause, it would have been unable, in this case, to check the literary, educational and economical advances of the South and probably the whole of our country would be at least half a century more advanced in every way.



## STATES' RIGHTS.

By L. H. Lancaster—1909.

In May, 1787, delegates from all the states except Rhode Island met in Philadelphia "for the sole and express purpose of revising the articles of confederation." It took, however, a very short time for the delegates to see that a mere revision of the old articles would not be sufficient for the needs of the people. So it was decided to make an entirely new constitution for a federal government.

In the drawing up of the new articles the convention was divided into two distinct parties—one in favor of giving the principal power to the central government; the other held that the states were supreme and should remain so. The convention finished its work and then submitted it to the approval of the various states. Delaware was the first to ratify the instrument. This she did on December 7, 1787. North Carolina and Rhode Island, the last states to act in the matter, ratified the constitution on November 21, 1789, and May 29, 1790.

As soon as the government was established under the constitution the statesmen and people were divided into two parties on the same principles that were debated in the Philadelphia convention. They were the "centripetal" and "centrifugal" forces in government, one favoring a strict, the other a loose, interpretation of the constitution in determining the relative positions of the Federal and the State authority. Jefferson and Hamilton were the champions of the opposing parties. But even Mr. Hamilton did not dispute that the states were sovereign.

No serious questions arose, nor was any belief, that the Federal government and not the states had the paramount

authority, advocated until 1830. During this year the momentous Hayne-Webster debate took place. These two men were extremists of the opposing schools. Mr. Hayne spoke for nullification and state-sovereignty, showing that the constitution was a compact and the Union a partnership voluntarily entered into. Mr. Webster with still greater enthusiasm and force advocated the view of the indissoluble character of the Union; that the constitution was not a compact, and that the states were subordinate.

Probably the chief argument advanced by Mr. Webster in this and other speeches, and by other holders of those views, was that the words of the preamble, "We, the people of the United States, in order to form a more perfect union \* \* \*," could mean nothing else but that the constitution was a creation of the people as a whole, and for that reason the people as a whole or the central government was the power to which our allegiance was due. This interpretation was foreseen and feared by a few great leaders at the time of the adoption of the constitution. Samuel Adams, of Massachusetts, in a letter to Richard Henry Lee about the constitution, said, "I stumble at the threshold." Patrick Henry in the Virginia Convention strongly attacked this phraseology: "That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen (its authors); but, sir, give me leave to demand, what right had they to say, 'We, the people'? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, who authorized them to speak the language of, 'We, the people,' instead of we, the states? States are the characteristics and the soul of a confederation. If the states be not the agents of this compact, it must be one great consolidated national government of the people of all the states."

Another point raised by the champions of the national government was, in the words of Webster:



"That the constitution of the United States is not a league, Confederacy or compact, between the people of the several states in their sovereign capacities; but a government proper, founded on the adoption of the people, and creating direct relations between itself and individuals.

"That no state authority has power to dissolve these relations; that nothing can dissolve them but revolution; and that, consequently, there can be no such thing as secession without revolution.

"But I do agree that it is founded on consent or agreement \* \* \* and means no more by it than voluntary consent or agreement. The constitution, sir, is not a contract, but the result of a contract \* \* \*. The people have agreed to make a constitution, but, when made, that constitution becomes what its name imports. It is no longer a mere agreement."

The definition given of the constitution is "the fundamental law" or "the supreme law of the state." It was argued that the word "compact" occurs but once in the constitution and that when the states are forbidden to make any compact. A government was established. What is a government? Is it a "league," a "compact"? Mr. Webster said that this government came into being and sovereignty when the constitution was ratified by the parties to the contract and that the result is entirely different from the cause.

All of the debaters on these questions clearly imply in their statements that, if the constitution were a compact, and if the states acceded to it, the sovereignty of the states and the right to secede would be unquestionable.

The opening the preamble has been considered the stronghold of the centralizing party. The argument is fully answered by Madison's reply to Patrick Henry:

"Who are parties to it (the constitution)? The people, but not the people as composing one great body; but the people as composing thirteen sovereignties: were it, as the gentleman (Mr. Henry) asserts, a consolidated govern-

ment, the assent of a majority of the people would be sufficient for its establishment, and as a majority have adopted it already, the remaining states would be bound by the act of the majority, even if they unanimously reprobated it: were it such a government as is suggested, it would be now binding on the people of this state, without having had the privilege of deliberating upon it; but, sir, no state is bound by it, as it is, without its own consent. Should all the states adopt it, it will be then government established by thirteen states of America, not through the intervention of the legislatures, but by the people at large."

It might also be interesting to note how that part of the preamble was written and the views held by the framers of the constitution about it:

The preamble of the original draught of the constitution started, "We, the people of the states of New Hampshire, Massachusetts," etc., naming each of the thirteen colonies. After waiting for more than a year, when it seemed very doubtful whether all the colonies would join the compact, a change was made. It was decided to establish the government under the constitution when nine colonies had ratified it. But there was no power which could possibly tell how many or which states would accede to it. So the "committee on style" had to omit the list of states and put in its place the indefinite "people of the United States." And, of course, they meant by that the people of the individual states which should ratify the constitution.

Jefferson Davis in his "Rise and Fall of the Confederate Government" says: "If, then, we can conceive, and admit for a moment, the possibility that, when the constitution was under consideration, the people of the United States were politically 'one people'—a collective unit—two deductions are clearly inevitable: In the first place, each geographical division of this great community would have been entitled to vote according to its relative population; and, in the second, the expressed will of the legal majority would have been binding upon the whole. A denial of the

first proposition would be a denial of common justice and equal rights; a denial of the second would be to destroy all government and establish mere anarchy.

"Now, neither of these principles was practiced or proposed or even imagined in the case of the action of the people of the United States (if they were one political community) upon the proposed constitution. On the contrary, seventy thousand people in the State of Delaware had precisely the same weight—one vote—in its ratification, as seven hundred thousand (and more) in Virginia, or four hundred thousand in Pennsylvania. Would not this have been an intolerable grievance and wrong—would no protest have been uttered against it—if these had been fractional parts of one community of people?"

The Senate stands as the lasting monument to the sovereignty and individuality of the states. No legislation is enacted, nor is a President elected, but that we are reminded of this truth. There have been three men who had either a majority or plurality of the votes of the people for President, but their opponents were elected to that office. It would have been entirely possible for the constitution to have been rejected by the majority of votes cast, and still to have been adopted by the states. Can we, then, say that the constitution was adopted by the people "in the aggregate"?

In answer to the argument that the constitution is not a compact, and to show that the states retained their sovereignty, we can bring forward the following truths:

The constitution was ratified by each state separately and of its own accord. We have seen that two states did not enter the compact until more than a year after the inauguration of Washington. And it was called a compact by its framers, and the statesmen of the time. Jefferson in the "Kentucky Resolutions" speaks in these clear and strong terms: "Resolved, that the several states composing the United States of America are not united on the principle of unlimited submission to their general govern-

ment; but that by compact under the style and title of a constitution for the United States and of amendments thereto, they constitute a general government for special purposes, delegating to that government certain definite powers, reserving each state to itself the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts were unauthoritative, void and of no force; that to this compact each state acceded as a state; \* \* \* that the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, not the constitution, the measure of its powers; but that, as in all cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

Madison, one of the greatest thinkers of his day, calls the constitution "a compact between the states in their highest sovereign capacity." The Supreme Court, which was established to be the final judge of all cases arising under the constitution, gave this opinion through its Chief Justice, John Jay: "The constitution of the United States is a compact."

It is a surprising thing to see that Webster, the champion of the national idea and one of the most vehement opponents of the Southern policy, changed his opinion and publicly declared the constitution a compact and admitted the right to secede. He says in a speech made in 1839, "How absurd it is to suppose that when different parties enter into a compact for certain purposes, either can disregard any provision and expect, nevertheless, the other to observe the rest!" And, "I have hesitated to say, and I repeat, that if the Northern states refuse, wilfully and deliberately, to carry into effect that part of the constitution which respects the restoration of fugitive slaves, and Congress provide no remedy, the South would no longer

be bound to observe the compact. A bargain cannot be broken on one side and still bind the other side."

We must also remember that the authors of the constitution were mere delegates, voting by states, and whose action had no binding force. The last article of the constitution is this: "The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying same." It would seem that the language of this single article ought to be enough to convince one that the constitution is simply a compact. Notice the word "between!" What else can it mean but an agreement made by independent parties, not "over" them? No "superior people" would have thus spoken.

If the government under the constitution is not a compact, what is it? Every one of the states so understood it and two, Massachusetts and New Hampshire, one represented by Mr. Webster, the other his native state, expressly called it so in their ratification of the constitution.

Then we find that some of the states in their articles of the ratification even laid down conditions under which they would join the Union. South Carolina accompanied her ordinance of ratification with these words: "This convention doth also declare that no section or paragraph of the said constitution warrants a construction that the states do not retain every power not expressly relinquished by them and vested in the general government of the Union." New Hampshire expressed herself in almost the same terms. Virginia came out still stronger in her statement, "That the powers granted under the constitution, being derived from the people of the United States, may be resumed by them, whenever the same shall be perverted to their injury or oppression, and that every power not granted thereby remains with them and at their will," etc. New York's declaration contained the same opinions and conditions as that of Virginia. It is hard to see how a man could

possibly ignore or twist these statements that are so explicitly made in the terms of ratification by these states.

Part of these declarations—that part which says that the states retained the powers not delegated and the only part over which it was thought a question could ever be raised—was soon added as a tenth amendment. It seemed superfluous to place the other part of those declarations—the portion which speaks of reasoning their old positions if they thought best—in the constitution.

For the constitution was universally considered a compact and the conditions of ratification were so clear. Hear Rhode Island express herself:

“That Congress shall guarantee to each state its sovereignty, freedom and independence, and every power, jurisdiction, and right, which is not by this constitution expressly delegated to the United States.”

When a group of states, on equal footing, voluntarily, and laying down conditions under which they join the Union, unite in order to protect themselves and to promote the general welfare of the whole, the Union thus formed is nothing else but a compact.

After we see that the constitution is simply a compact there are certain rights and privileges that come from the very nature of it as a compact, and they are unquestioned. The chief one of these rights is that by which a compact ceases to be binding on any party to it, if another party has broken it. Then, unless a compact contain a provision that it shall last for a certain length of time, it may be dissolved at will by any member of it. Of course, the reasons for so doing should be seriously considered and the party that withdraws may be held responsible for the damage caused by a wanton exercise of this power.

Now, if sovereign states accede to a compact or unite themselves in a league for common benefits, it is true that, unless they expressly delegate that sovereignty to the creature they have made, each one retains that sovereignty and in no way can they be deprived of it. The tenth amendment

declares that "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." So, to say that the general government is sovereign, because there is nowhere stated in the constitution that the states retain their sovereignty, is directly opposed to the plain statement and sentiment of that constitution.

It would have been considered treason during the early days of the Union to say that the states were not sovereign. And all public utterances on that subject distinctly affirm the sovereignty and independence of the states. Vattel writes in his chapter "Of Nations of Sovereign States": "Several sovereign and independent states may unite themselves together by a perpetual confederacy, without each in particular ceasing to be a perfect state. They will form together a federal republic: the deliberations in common will offer no violence to the sovereignty of each member, though they may, in certain respects, put some restraints on the exercise of it, in virtue of voluntary engagements. A person does not cease to be free and independent when he is obliged to fulfill the engagements into which he has very willingly entered."

Alexander Hamilton says in the "Federalist": "Do they (the fundamental principles of the confederation) require that, in the establishment of the constitution, the states should be regarded as distinct and independent sovereigns? They are so regarded by the constitution proposed."

De Tocqueville, one of the most learned of the foreign writers on our government and an unprejudiced observer, makes this simple statement: "However strong a government may be, it cannot easily escape from the consequences of a principle which it has once admitted as the foundation of its constitution. The Union was formed by the voluntary agreement of the states; and these, in uniting together, have not forfeited their nationality, nor have they been reduced to the condition of one and the same

people. If one of the states chose to withdraw its name from the contract, it would be difficult to disprove its right of doing so, and the Federal government would have no means of maintaining its claims directly either by force or by right."

Therefore, with the constitution itself, with the statements and writings of its framers, its ratifiers, and its interpreters before us, we must accord with the view that our loved Southland was constitutionally free to do as she thought best to protect herself and to maintain the principles for which both sections poured out their blood in the War of Independence.



**THE SOVEREIGNTY OF THE STATE AND SECESSION.**



## THE SOVEREIGNTY OF THE STATE AND SECESSION.

By James M. Cecil—1910.

Contrary to the nearly universal opinion, the American Civil War of 1860-65 did not originate in the dispute over the legal status of the negro. Slavery was merely an incident to the war, and not the prime factor in its origin. The *causa causans* of the titanic struggle is traceable to the disagreement upon the nature of the Federal Government; the different constructions placed upon the constitution by the two sections of the Union, and the question where the ultimate sovereign power or paramount authority resides. It is undeniable that the motives that actuated the Southern States in the dissolution of the Union were not merely the overthrow and destruction of the existing government, but the preservation of the very principles upon which the Federal Government was founded. The passage of time modifies passion and permits a more impartial view to be taken of a disputed subject, especially where the parties engaged are instigated by unswerving moral convictions and blinded by sectional jealousies. Snap judgments passed at the time of action are often reversed by succeeding generations. So we, of a later century, are emboldened to undertake the consideration of Civil War themes, and may presume to arrive at a less embittered conclusion.

In the year 1860, the loyal patriots of the South, the very men who had been so zealous of the Union and so unselfish in their devotion to it, found themselves face to face with a most perplexing problem. Either they must submit to the palpable infringement of their political rights and the consequent obliteration of their sovereignty as states;

or to perpetuate the fundamental principles of this Union by the withdrawal from it and the establishment of another, a step which they were loath to take. Until the day of Webster, no one had dared to question the indefeasible right of secession from a government which all regarded as the creature of the states. There is no better expression of the sentiment of the Southern people than the words of Jefferson Davis, the President of the Confederacy: "No alternative remained except to seek the security out of the Union which they had vainly tried to obtain within it. The hope of our people may be stated in a sentence. It was to escape from injury and strife in the Union, to find prosperity and peace out of it."

Beyond a doubt, the unprejudiced reader will admit that if we can prove the assertion that the Union is a compact entered into by sovereign and independent states, then the actions of the Southern States were conformable with the spirit of this Federal Government. To attain this end, we must first establish the fact that these States were independent before the first union; that this sovereignty was not surrendered by them in the articles of Confederation or in this present constitution; and that this freedom is still extant. Because no one can dispute the maxim of law which states that sovereignty cannot pass by implication, but must be expressly relinquished. If we can show that the sovereignty of the States was not expressly given up in either of the above-named documents, then our point will be gained. Then to demonstrate that the States, and not the Supreme Court, are the final judges of violations of this compact, will render our argument for secession conclusive.

Going back to the very birth of the Union, let us consider first the instrument of their existence. Justice Story, of the Supreme Bench, in common with many other radical nationalists, argued that this Declaration of Independence asserted the independence of the people of the United Colonies as a whole, as one "nation"; and consequently the

States were never separate and distinct sovereignties. But their premises being erroneous, their conclusions must necessarily be false. What can they say to the wording of the Treaty of Peace that concluded the Revolutionary War? This document reads: "His Brittanic Majesty recognizes the said United States, viz.: New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, etc., etc., to be free, sovereign and independent states." What construction can they put upon the resolutions of the State Conventions authorizing the Declaration? "We, the delegates of Maryland (for example), \* \* \* have thought it just and necessary to empower our Deputies in Congress to join with a majority of the United Colonies in declaring them *free and independent States*, in framing such further confederation between them \* \* \* as is necessary for the *preservation of their liberties*." The resolutions of the other states are literally synonymous, and additional citations would be repetition. They all coincide in the emphatic avowal of their separate and distinct independence. But if further illustration be necessary to establish the original sovereignty of the States, we have only to consult the old treaties with France and Sweden which recognize plainly the thirteen States acting in unity for this specific purpose. "We, the people of the States of Massachusetts Bay, New York, etc.," enumerating the whole thirteen States. So much for the contention that the States were never separate and independent sovereignties.

It now devolves upon us to show that the States did not relinquish this independence when they signed the articles of Confederation; a task which is not at all onerous, since Webster and most authorities concede this. At the time when the Union was in embryo, and the articles under construction, each state was equally quick to resent any real or implied infringement of their rights as sovereignties. Every measure proposed was carefully scanned, and any insinuation tending towards the curtailment of the States'

power was immediately rejected. The delegates to the Convention took particular pains to style the league as "The Articles of Confederation and perpetual Union *between* the States of New Hampshire, Massachusetts Bay," etc. That one word "between" proves our point, as a league or compact can only be formed between separate and independent parties. To make plain to all how clear in their minds was the sovereignty of these political units, Article II was carefully inserted. "Each State retains its *sovereignty, freedom and independence*, and every Power, Jurisdiction and right which is not by this confederation expressly delegated to the United States, in Congress assembled."

Since it is almost self-evident that the States retained the paramount authority under the Articles of Confederation, let us next observe their condition after they acceded to the Constitution of 1787. The next step in our argument is to prove that they did not expressly relinquish their sovereignty in the new Union. In the first place, the old league had proven, after a fair test, inadequate in certain particulars to a strong Union. It is a comparatively simple matter to prove that the sole object in drawing up a new compact was to remedy the deficiencies in the old articles, and not the origination of a new Union upon radically different principles; not to alter the entire nature of the existing government, but the strengthening of the old. The resolutions of several State legislatures, consenting to the Constitutional Convention of 1787, leave not a shadow of a doubt as to the prime object of that assemblage. As the wording of all these State resolutions was practically the same, we shall quote only that of Georgia. The General Assembly of Georgia "ordained" the appointment of certain commissioners, specified by name, who were "authorized as deputies from this State, to meet such deputies as may be appointed and authorized by other States, to assemble in convention in Philadelphia, and to join with them in devising and discussing *all such*

*alterations and further provisions, as may be necessary to render the Federal constitution adequate to the exigencies of the Union.*" The "Union" then in existence, it is clear, and not a *new* system of government devised by this convention.

What the delegates themselves conceived to be the sole purpose of their assemblage may be correctly gathered from surviving records of the convention. When the convention had become deadlocked over the Virginia plan of Union, Mr. Bedford, of Delaware, arose and said: "That all the States at present are equally *Sovereign and Independent*, has been asserted from every quarter of this House. Our deliberations here are a confirmation of that position. \* \* \* Let us do then what is in our power—*amend and enlarge* the Confederation, but not alter the Federal system." And there was little, if any, dispute over this statement. There can be no more decisive proof of our position than the actual words of the men that wrote the constitution. Madison's speech in the Virginia Convention expresses the same belief: "Who are parties to it? (The constitution.) The people, but not the people as composing one great body; but the people as composing thirteen sovereignties." In speaking of the several states under the new constitution, Tucker, of Virginia, in 1803, writes in an edition of Blackstone: "Each is still a perfect state, still sovereign, still independent, and still capable, should occasion require, to resume the exercise of its functions, as such, to the most unlimited extent."

It is entirely within the power of brilliant minds to put fallacious constructions on a sentence, to interpret articles in a thousand ways different from their original intent, to distort the meaning of this word and that, in fact, to alter beyond recognition the true conception of a clause; but the fact still remains that there have been preserved to us the ideas and designs of the men who called this Union into existence—testimony which is indisputable. While there was not much need for the extreme "States' rights" men to

agitate a convention in which their opinions were almost unanimously accepted, yet there did crop out some slight opposition. A measure was even introduced on the floor of the convention, advocating the practical abolition of state authority, and the fusion of the thirteen states into one nation. But this proposition met with crushing defeat, and immediately the clause was inserted in the constitution, peremptorily restricting the Federal Government to those powers expressly delegated to it by the States. To allay the ever-vigilant people, Madison was forced to state in the convention, that "A breach of any one article by any one party leaves all other parties at liberty to consider the whole convention dissolved." The guardians of States' rights were so distrustful of these new articles of agreement that Alexander Hamilton felt called upon to say, that "The States can never lose their powers until the whole people of America are *robbed* of their liberties." To aptly state the sole and true aim of the new constitution, we must use the words of Thomas Jefferson: "To make us one nation to foreign affairs," he wrote, "and keep us *distinct* in domestic ones, gives the outline of the proper division of power between the general and particular governments."

We must admit the learning and wisdom of Chief Justice Marshall of the Supreme Court, the foremost jurist and interpreter of the constitution of the age. In rendering a decision of the Supreme Court, he said: "It has been said that they (the States) were sovereign, were completely independent, and connected with each other only by a league. This is true!" If we still doubt that the makers of the nation regarded the Union as a compact, let us examine what Mr. Curtis says in his "History of the Constitution of the United States." He writes: "The parties to this instrument (the constitution) were free, sovereign, political communities—each possessing within itself all the powers of Legislation and Government over its own citizens which any political society can possess." When



such staunch loose-constructionists, as Marshall and Hamilton, are obliged to acknowledge the sovereignty of the States, surely we are justified in accepting their reluctant confession as the universal belief of the day.

The relative position of the States to the Federal Government is stated in unmistakable language in the resolutions of Virginia and Massachusetts in 1798, when the Alien and Sedition laws were passed. The State of Virginia drew up the following paper, and when it was sent to the other states for their approval, all were unanimous in their approbation: "This assemblage doth explicitly and peremptorily declare that it views the powers of the Federal Government, as resulting from the *compact*, to which the States are parties, as limited by the plain sense and intention of the instrument constituting the *compact*; as no further valid than they are authorized by the grants enumerated in that *compact*; and that in case of a deliberate, palpable and dangerous exercise of other powers not granted by the said *compact*, the States who are parties thereto have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights and liberties appertaining to them." And this avowal of the States came in 1798—at a time when one still looked askance at the constitution. It is nothing less than the plain statement of the nature of our Federal Government by the very men who created it.

The terms in which the several sovereign states ratified the constitution is hardly known by the general public. They are not aware that Massachusetts called the Union "a solemn compact" in her ratification, and that two other states reserved the right of secession. Here is an extract from the Virginia ratification: "We, the delegates of the people of Virginia, do declare and make known that the powers granted under the constitution, being derived from the people of the United States, *may be resumed by them*, whensoever the same shall be perverted to their injury or

oppression." The main point to be derived from these documents is the fact that every one, at that time, recognized so readily the sovereignty and identity of the States; that these States were admitted to the Union under these restricting conditions so plainly set down, and no one advanced any contradiction. Their silence is ample proof of their concordance with these sentiments. We need scarcely summon to our aid the stupendous mass of testimony that is at hand, when we already have such unanswerable arguments as these. The great Webster himself was silenced by these indisputable facts. And why need we say anything upon the subject of the preamble—one of the rocks upon which the nationalists pin their faith—when it has so often and so forcibly shown that this wording was unavoidable under the circumstances, and that the members of the convention regarded it as synonymous in substance with the original draft? This argument having been refuted, I say, by more learned heads than ours, we will bring our case to a close, and advance to the question of secession.

Since we have arrived at the conclusion that the Union is a compact between sovereign and independent States, we must next consider whether or not these separate political units had the right to withdraw from this compact or agreement.

No more binding or indisputable principle of law is recognized than that when one party to a compact violates the agreement, the other party is released from all obligations. How much more evident in a political partnership, where certain actions are so pregnant with obvious dangers and evils! The Federal Government was regarded, by its founders, as such a compact; and it was the accumulation of palpable infringements of their rights that forced the Southern States of the Union to dissolve the partnership.

It will be quite needless for us to trace the origin and development of the secessional theory. It is common knowledge how, in the first decades of the Union, the New Eng-

land States threatened time and again to withdraw from the compact. How no one disputed their right to do so at will. How they even went so far in 1814 as to call the Hartford Convention, not to consider the *legality* of secession, but the *expediency* of the court. How the North urged disunion when the Louisiana purchase was made, and when Texas was admitted to the Union. But there is another fact not so generally known, and that is that every president from 1800 to 1860 was elected on the platform of State Sovereignty; each chief executive from Mr. Jefferson to Mr. Lincoln's time was an avowed exponent of the independence of the States. You see what this means. Merely that for sixty years this momentous question was laid before the people of the States, and a majority of these States each time upheld States' rights. Many will ask, what about General Jackson's Proclamation of Nullification? Instead of avowing nationalistic belief in this paper, what he really said was, that while he did not deny the "indefeasible right" of any state to object to any unauthorized action of Congress, he did not see how any one state could nullify an act of Congress, and "*still stay in the Union.*" And this, you see, is a plain confession of the right of secession. And General Harrison, while really elected on a war platform, expressed his opinions in his inaugural address: "Our *Confederation* is perfectly illustrated by the terms and principles governing a common *co-partnership.*"

Thomas Jefferson, founder of the Union and writer of the Declaration of Independence, leaves no doubt as to his views and those of the States, in the Kentucky resolutions: "The several States composing the United States of America were not united on the principle of unlimited submission to their general government; but that, by *compact*, under the style and title of a constitution \* \* \* they constitute a general government for general purposes." On another occasion, James Madison called the constitution "a compact between the States in their highest sov-

oreign capacity." And of equal significance is the statement of Chief Justice Jay, that "the constitution of the United States is a compact." Few people are cognizant of the fact that, later in life, Daniel Webster changed materially his conception of the Union. His testimony should be of the greatest weight in any argument that has to do with the constitution. Mark carefully what this genius said in 1839: "How absurd is it to suppose that where different parties enter into a compact for certain purposes, either can disregard any one provision and expect the other to abide by the rest! \* \* \* I have not hesitated to say, and I repeat, that if the Northern States refuse, wilfully and deliberately, to carry into effect that part of the constitution which respects the restoration of fugitive slaves, and Congress provides no remedy, the South would no longer be bound to observe the compact."

To uphold and endorse the character of our argument—the numerous questions and opinions of the authors of the constitution—let us appeal to that legal maxim which says: "*Contemporanea Expositio est optima et fortissima in Lege.*" In other words, the best and surest mode of expounding an instrument is by referring to time when, and circumstances under which, it was made. Can there be any surer method of ascertaining the original import of the constitution than by reviewing the sentiments of the men who wrote it? What matters subsequent expositions, if we have at hand the ideas and intentions of the founders of the Union? In pursuance of this line of argument, let us delve still deeper into the storehouse of constitutional records. At the time when the constitution was under consideration by the States, Alexander Hamilton wrote in the *Federalist*: "Do they require that, in the establishment of the constitution, the States should be regarded as distinct and independent sovereigns? They are so regarded by the constitution proposed." There is also preserved to us a speech of Roger Sherman, in which he said: "Foreign powers have made treaties with us as *Confederate States*,"

not as a national government." When we have on our side the written testimony of such men as Sherman, Patterson, Hamilton, Morris, Bedford, Madison and Pinckney—men whose names are appended to the constitution—what can be said in behalf of the strange and unthought of interpretations placed on that famous document? Their sentiments are in entire uniformity, and each and every one eschews any idea of the surrender of the States' sovereignty in the constitution.

We must all admit that foreign students of the theory of government should be able to render an impartial exposition of the constitution. All agree that the States not only retained their entire independence in this Union, but had the right to withdraw from it at will. Our paper would be incomplete without the opinion of at least one of these unprejudiced observers. De Tocqueville, an earnest student and profound thinker, makes this plain statement: "The Union was formed by the voluntary agreement of the States; and these, uniting together, have not forfeited their nationality, nor have they been reduced to the condition of one and the same people. If one of the States chose to withdraw its name from the contract, it would be difficult to disprove its right of doing so, and the Federal Government would have no means of maintaining its claims directly, either by force or by right." This is a clear, concise exposition that corresponds in every detail with the original purpose in the minds of the makers of the Union.

We have now arrived at a point around which there has been so much dispute. We have endeavored to show that the thirteen States composing the original Union retained their identity and independence under the present constitution; that the confederation was a compact between sovereign parties and the new Union a like contract; and that the States believed the Federal Government an agreement from which they were at liberty to withdraw if circumstances warranted such an action. But the

question now arises, who is the final arbiter of violations of this compact, who is to judge of infringements of the agreement?

Many Northern writers have insisted that the Supreme Court of the United States must be the final arbiter of violations of the compact. But this could hardly be the case. These gentlemen base their argument upon the clause in the constitution which makes the Supreme Court the court of last resort in "all cases in law and equity"; overlooking the fact such a vital question as any infringement of the compact must lie beyond the pale of law and equity. The power which the Federal Government wielded was entrusted to it by the States, and consequently these should be the judge of the power that they delegated. As Jefferson says in the Kentucky resolutions: "The government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to *itself*, since that would have made *its* discretion, and not the *constitution*, the measure of its power; but that, as in all other cases of compact between parties having no common judge, *each party* has an equal right to judge for itself as well of infractions as of the mode and measure of redress." And this is a succinct statement of the conviction of the "loose-constructionists," the party to which the Southern States adhered. It is inconceivable to believe, in the light of existing testimony, that the men who were so resentful of any implied attack on the sovereignty of the state would have made this creature of the States the judge of the powers delegated to it. On the contrary, they were careful to retain intact just such powers as this by the insertion of the Tenth Amendment. We can gain a fair idea of what the people of the early Republic thought upon the subject by the perusal of the report of the Hartford Convention, which met in 1814 to consider the advisability of the New England States withdrawing from the Union. These representatives declared that, "When emergencies occur which are either beyond the reach of the judicial tribunals, or

too pressing to admit of the delay incident to their forms, states which have no common umpire must be their *own judges*, and execute their own decisions." The careful reader will immediately see that this "*contemporanea expositio*" is not only an open refutation of the claim that the Supreme Court is the final arbiter, but is an unmistakable avowal that the States have reserved the right to judge of any violations of the compact that unites them. So it is not so astonishing to learn that a convention in Ohio in 1859 declared the constitution a compact to which each state acceded as an integral party and each has the right to judge for itself of infractions; and to this such men as Giddings, Wade, Chase and Denison assented!

It is a source of gratification to the people of the South that each day brings forth some new light which reflects credit upon the men of 1860-65; that each year the conviction is becoming firmer and more universal that the South fought not only for what they thought was right, but what was ethically and legally right. Henry Cabot Lodge of the United States Senate, himself a Northerner, has summed up the whole matter in a nut shell: "When the constitution was adopted by the votes of the States at Philadelphia, and accepted by the votes of the States in popular conventions, it is safe to say that there was not a man in the country, from Washington and Hamilton on the one side, to George Clinton and George Mason on the other, who regarded the new system as anything but an experiment entered upon by the States, and from which each and every state had the right to peaceably withdraw, a right," he adds, "which was very likely to be exercised."

*Quae cum ita sint*, since these things are so, we concur most heartily in the beliefs entertained by Mr. Calhoun. The arguments advanced by this champion of State Sovereignty were unanswerable. Mr. Webster never attempted a refutation, no one before or since could reply to him. We believe that sovereign states adopted the constitution, and since sovereignty is indivisible, although the States dele-

gated to the Federal Government the right to exercise certain powers for the common good, each of these political units reserved its sovereignty entire, and had the right of an independent state to resist the attempt of any one to exercise over it power that the state had not relinquished; and that in such case, each state had the indefeasible right, in virtue of its undiminished sovereignty, to assert its independence and to withdraw from the compact.



**JOURNALISM AND AUTHORSHIP IN THE  
ANTE-BELLUM SOUTH.**



## **JOURNALISM AND AUTHORSHIP IN THE ANTE-BELLUM SOUTH.**

**By Joseph M. Crockett—1911.**

Much has been written of the barrenness of the Old South in the field of literature. Nevertheless, world-wide are the erroneous impressions as to the causes of this incontrovertible fact. It is most fitting that the causes be considered that lead to such a condition, for in the Old South lived a people with an intellectuality of the highest order, and their failure to produce a recognized literature and scholarship is one of the most notable conditions of a civilization which was as remarkable in many respects as any that has existed since the dawn of history.

It was not due to intellectual poverty, yet, this is one of the impressions that has gone abroad. Thomas Nelson Page, a southern writer who has received universal recognition and praise, has well answered this accusation: "The charge, however, is without foundation, as will be apparent to any fair-minded student who considers the position held by the South not only during the period of the formation of the government, but also throughout the long struggle between the South and the North over the momentous questions generated by the institution of slavery. In the former crisis the South asserted herself with a power and wisdom unsurpassed in the history of intellectual resource; throughout the latter period she maintained the contest with consummate ability and with transcendent vigor of intellect." History abundantly justifies the conclusion reached by Mr. Page.

When the American colonies decreed to withstand further oppression and tyranny from across the sea, the Old

South gave Washington, who among the military leaders of that memorable war, stands alone like some peak in the mountain range of greatness. When the young republic was shrouded in discouragement and disaster, and the people generally were longing for the war to cease, it was a southerner, Patrick Henry, who fired into the hearts of his countrymen a desire to conquer or to die. Thomas Jefferson, "The Sage of Monticello," penned the noted writing that severed the child from its cruel mother. The constitution of the United States is one of the greatest and most stable governmental documents ever constructed by man, and James Madison gained the reputation among its makers as the "Father of the Constitution." John Marshall was its great expounder. It is well to remember that the South furnished two members of the Great Triumvirate, Clay and Calhoun; and while Webster frequently rose to a high pitch of eloquence that placed him as an orator beyond the reach of rivalry, thousands of students have assigned both Clay and Calhoun to a rank higher than third. Henry Clay was in many respects the greatest parliamentary America has yet produced.

William Pinckney (1764-1882), of Maryland, has been entitled by no less contemporaries than Story and Benton as the most brilliant lawyer at the American bar during the early part of the nineteenth century; although he was frequently interrupted in the practice of his profession by his country's call, and rendered distinguished services as a cabinet officer, a member of both branches of Congress and as United States minister to the Court of St. James during the critical period from 1807 to 1811. In the medical profession, Dr. J. P. Mettauer (1787-1875), of Prince Edward County, Virginia, took first rank in this country. One of his notable achievements in the early part of the nineteenth century was his recognition of typhoid fever as a distinct disease, and his valuable articles showing its characteristic symptoms as compared with typhus and remittent fever. Many other instances can be pointed out of writers, law-

yers, statesmen, authors, orators, poets, physicians, soldiers, scientists, philosophers, ministers and diplomats—in fact from every vocation, showing that among the Southern people was an intelligence and expertness seldom found within the compass of so brief a regime; but with particular persons this paper is concerned only to the extent of showing that the lack of literature in the Old South cannot be attributed to mental indigence or mental lassitude.

The Southern people were an agricultural people and no agricultural people has ever produced a literature. In the history of literary life, cities have proved essential where men with literary instincts may commingle and where their thoughts may be focussed. Instead of settling in towns and communities and building up manufacturing and industrial centers, the bent of the Southern people from the beginning was to hold property in severalty in large bodies, and to continue the memorial system after the custom of their fathers and their kinsmen of the old country with whom even after the Revolution, they kept up a sort of traditional association. As post-bellum life in the South has shown, Slavery was the cause of this condition.

The notion that the Southerner of the old regime was little more than a gentleman of courtly manners, old fashioned culture and luxurious habits is also attributable to the fact that they lived on large estates and were waited on by servants and slaves. Besides keeping the Southerner on large plantations, thus making impossible literary foci, slavery also engendered many questions in the halls of Congress and elsewhere that so unremittingly exercise the attention of the South that it had neither time nor opportunity, if it had had the inclination, to apply itself to other matters. The intellectual powers of the South were so obsorbantly devoted to the subject of slavery and other questions generated by it, of a polemical character, that it generally took the direction of spoken and not of written speech. Again, the physical conditions as hereinbefore

mentioned were so adverse to the production of a literature that those who turned their attention to the writing of verse and fiction received little, if any, encouragement from their fellow Southerners. Not only the Southland, thus far America has not been the land of truly great poets, but surely one of the best ways to bring forth great poets is to give reasonable support to those we have, and since the ante-bellum Southerners did not foster and buoy up their own versifying compatriots, it is no wonder that these servants of the Muses received but scant consideration in other quarters. It was a lack of inclination and not a lack of knowledge, for the ancient classics were widely diffused among the Southern people, not merely to the extent that they were walking repositories of dead learning, but it was part and parcel of their social life and weapons in their harangues on the stump and in the legislative halls of the state and nation.

"Literature," says Carlyle, "is the thought of thinking souls." "Accepting this definition," says Page, "the South was rich in literature." There was sufficient poetry and wisdom delivered on the porticoes and in the halls of the Southern people to have enriched the age, had it been transmitted in permanent form; but wanting both the means and the inclination, they were wasted in discourse or were spent in mere debate.

Though natural environment prevented the development of a literature in the South, a brief survey of the history of Southern journalism will readily reveal the high intellectual powers of the ante-bellum leaders, their failure being solely due to the fact that their literary work was in the main but the desultory "jottings down" in their hours of recreation of fragmentary sketches, which were usually based on the humorous phases of life with which their profession made them familiar, and almost the best is stamped with the mark of an apparent dilettanteism.

The dominant power in the early colonial government was the governor. In order to exercise with adequate

facility this control in the hands of the reigning force, and to place before the colonists adequately the laws passed for the administration of their affairs, a means of ready information was pre-eminently important. As a response to this demand many prominent colonists established newspapers and periodicals designed to convey in accurate form the information of the day.

The Southern colonies were generous in their contribution of such public-spirited men. To Maryland must be awarded, however, the honor of the first editor, one William Parks, who, in 1727, instituted the publication of the *Maryland Gazette*, at Annapolis, Maryland. This was the genesis of that noble group of men in the South, who, as editors, have contributed the full measure of their abilities to the organization and the reorganization of their native or even adopted section. In the spirit that has dwelt in their never-ceasing efforts for the public benefit, there is something appealing in the devoted patriotism that ever has been theirs.

Parks, of Maryland, was not alone in his adventure. Some three years afterwards in the sister colony of South Carolina, at Charleston, Eleazer Phillips, formerly of New England, attempted the same course in the *South Carolina Journal*. Not to be left behind, Virginia contributed one of the most striking of the early colonial editors of the South in the person of John Bradford, who honored himself by being the first man to found a newspaper to the west of the Alleghany Mountains. It was in 1787, amid the initial movement of the new government, that the *Kentucky Gazette* appeared. Georgia claims, however, sometime prior to this event, the *Georgia Gazette*, which was made possible in 1763 through the genius of that hardy Scotchman, James Johnson.

The last members of this early group of Southern editors, who had accomplished already so much by their virile publications, were Fontaine, Hood and Miller. Fontaine established the *New Orleans Moniteur* in a city that was

to become the home of many valuable periodicals. Subsequently, eight years later, Hood and Miller undertook their most thank-worthy editorial labors in the founding of the *Mobile Sentinel*. The owners and editors of these early sheets were usually one and the same person, and they combined in themselves the fearless Director of public opinion and the competent business manager. It was not until later that the editorial and business office became divorced. The history of the editorial policy of the South is the composite of several grand divisions following a natural historic sequence. The spirit of the editors of the ante-bellum period, their methods and activities, in the main, was diametrically in opposition to the second school during the last few decades of post-bellum times. The editors of the ante-bellum period, being primarily men of influential personalities and active partizans, logically grouped themselves by their states in which they chanced to reside.

One of the most influential of these state schools of editors, if they may be so designated, was that in existence in Virginia. A fitting co-partner to her material duties as sponsor for political leaders were Virginia's duties as the guardian of the editorial leaders of the nation and the South. Within her environs she may justly claim the distinction of having the first editor of real intellectual consequence. Out of a distinguished group of three, Thomas Ritchie (1778-1854), enjoyed the distinction of being the first to gain a vital political foothold in the counsels of the state and nation. He was a striking character. No man combined within himself in all the states of that period such qualities as he possessed for zeal and woe. No man, assuredly, was possessed of such conflicting attributes as to make him the object of fear and bitter hatred in one camp, and abject adoration and fanatic belief in the other. The qualifications of an editor of those times in a measure explain the cause of the popular estimate of Thomas Ritchie. The very editorial and political atmosphere was alive with a virulent bitterness in which no man might



indulge without justly bringing down upon his head the wrath of some faction. Sophistries and trickery, violent accusations and vitriolic denunciations, libel and political slander were legitimate weapons of the day for the destruction of an antagonist.

Ritchie was an accomplished master of these tools of his newspaper craft. As a consequence of his attitude of the Democratic organ, the *Richmond Enquirer*, he rose to a position of leadership in the ranks of his party. Consigned by his opponents to an eternal damnation, and lauded by his supporters to a niche beside that of Jefferson, it is of no wonder that the accounts of that time variously assign him curious positions. He was undoubtedly the leading journalist of the South during his period of leadership.

In direct opposition to this Democratic leader was a similar figure in the Whig ranks. John Hampden Pleasants was editor of the *Richmond Whig*. Journalism of those days was all personalities. Naturally Ritchie straightway fell afoul of Pleasants; the battle was hotly contested and bitter in the extreme. After Ritchie went to take charge of another publication in Washington, Ritchie, Jr., and another member of the family, took possession of the *Examiner*. As a result of an implication of some dishonor passing between these new editors and John Hampden Pleasants, the latter was killed in a duel with Ritchie, Jr. Editorial life was a militant one, indeed, in those years of bitter animosities.

The last member of this trio of Virginia editors was the commanding figure of John M. Daniel (1825-1865). After some extreme experiences as minister at a foreign court, he became the head of a semi-independent Democratic paper, the *Richmond Examiner*. Following the example of his compeers, he, too, indulged in the approved personalities of the journalistic methods of the day. His independence and spirit were a valuable asset; they did much for his paper and resulted in inestimable good to

the politics of his state and section. The roll of Virginia editors is concluded by the names of several other lesser personages: Gales and Seaton, at the helm of the *National Intelligencer*, had a comprehensive influence, while Franklin P. Blair and John C. Reeves edited with commanding ability the *Globe* of the Democratic party.

South Carolina has always enjoyed a very enviable distinction in Southern letters. Her quota of editors substantiate her claim materially. Her first magazine and its prestige in the South being the initial venture of its kind, it drew many competent men of letters to her cities. Prominent among her literary men were, of course, the editors of the various publications. William Gilmore Simms was the leader of this capable group of men. Not satisfied with contributing to numberless periodicals, with his duties of editorship and production of miscellaneous articles, this voluminous writer must needs make a name for himself by founding and acting as editor of the *Charleston Gazette*. The personality of Richard Yeadon, a contemporary of Simms, was unique. As editor of the *Charleston Courier* his direction of many political policies was assured. He took advantage of his position. The record of his long fight for nullification and secession was a notable one; the application of this versatile lawyer's trained faculties to the task of moulding a public opinion was an essential factor in the attitude of this state to the dominant question of the period.

Several South Carolinians migrated to the neighboring state of Alabama, where they secured creditable honors as editors. The distinguished author, A. B. Breek, was one of these literary adventurers; he became connected in time with the famous journal, the *Mobile Register*. The second of these South Carolinians was John J. Seibels. His fortunes were cast with the influential *Montgomery Advertiser*. The *Mobile Register* had allied with it as makers of its long and notable career, Samuel F. Wilson and Thaddeus Sandord, who were also founders. Both of these men

were animated with high, though very practical, ideals of journalism. As a result, a deserved success became theirs, so that to this present day the Mobile Register continues to be an organ of wide influence, and considerable trustworthiness.

It is not necessary to summarize the history of journalism in the other Southern states. However, it is well to state that Georgia, Mississippi, Louisiana, Kentucky and Tennessee ranked equally in men of letters with South Carolina and Alabama. From such a record, how can we believe other than that the responsibility for the want of a literature was not with the writers, but with the environment? There was lacking not only the mental stimulus of contact between mind and mind, but also that yet more essential inspiration, sympathy with literary vitality which is as important—as the atmosphere is to physical existence.

Not only did the Old South produce men of distinction in journalism, but also in the realm of song and story. Of these we mention first the immortal Poe. Notwithstanding the coldness and indifference which he encountered in the Old Dominion, Poe ever declared himself a Virginian; and with all due respect to certain latter-day critics, who assert the contrary, it must be said that to those familiar with the qualities and with the points of difference between the Northern and Southern civilizations, Poe's poems are as distinctly Southern in their coloring, tone and temper as Wadsworth's are English. Poe, however, was limited by no boundary, geographical or other. The spirit-peopled air, the infernal chambers of fancied inquisitions, the regions of the morn, the imagined horrors of post-mortem sentence, were equally his realm. In all, his vast and weird and wonderful genius roamed unconfined and equally at home. In all, he credited his own atmosphere and projected his marvelous fancies with an originality and a power whose universal application is the undeniable and perfect proof of his supreme genius.

The story of his life reads more like romance than history. But with his personal career this paper is not concerned. His life has been for more than a generation the object of attack and vituperation which have raged with inconceivable violence. From the time that Griswold perpetrated his "Immortal Infamy," vindictiveness has found in Poe's career its most convenient target. Yet the works of this unfortunate have caught the human heart, and are today the common property of the English-speaking races, whether dwelling in Virginia or Massachusetts, Great Britain or Australia, and have been translated into the language of every civilized nation of Europe. Recent statistics from the English publishers, the Routledges, showed that thirty-six thousand copies of Poe's tales had been sold by them in the year 1903, as against less than one-third of that of many of the most popular and famous of our other American authors.

There were only three other verse makers besides Poe that can be described as professional men of letters. William Gilmore Simms, Henry Timrod and Paul Hamilton Hayne. The rest were lawyers, physicians, ministers, politicians, editors, and sentimental men and women who, busy with other things, courted the Muses as a kind of recreation.

Already, Simms is rarely thought of as a poet, for his talent and power seem to have been in other fields, and the amount of inferior verse left by him is immense; but with Timrod and Hayne the case is different. Both were men of exceptional poetic talent, and time will rather add to than detract from their fame. The gentle, high chivalry in the best Southern characters, the Southerner's love of state and section, the romantic color of his imagination, the sentimentality of his temperament, his adoration and respect for feminine beauty and purity are reflected with grace and charm, in the poetry of Hayne.

William Gilmore Simms has been mentioned both as a poet and as an editor, but it is as a romancer that he will

be remembered. He was a pioneer in the promotion of the literature of the Old South, and was her most representative man of letters. His great versatility kept him from following the true bent of his genius. He tried everything, and consequently, did not become pre-eminent in anything. Trent, in his biography of him, in summarizing his activity from 1842 to 1850, says:

"The main business of his life appeared to consist in endeavoring to put as many irons as possible in the fire. In these eight years he edits two magazines, begins to edit a third, is his own chief contributor, and favors his New York, Philadelphia and Richmond confreres with a perennial supply of manuscript. He is equally dexterous in dashing off satire and in delivering Fourth of July and commencement orations. He turns biographer, and with apparently little effort writes the lives of three American heroes, and then adventurously tries his hand on the romantic career of Bayard. He continues his investigations into the history of his native state, and publishes a geography of the same. He assumes the role of critic, fills his magazines with reviews long and short, and collects the best in two volumes. He edits apocryphal plays, and serves two years in the legislature. And in the midst of it all he finds time for an annual visit to the North, for jauntings through the South and Southwest, for balls and parties in Charleston, and for the duties of a planter at Woodlands."

Simms is an example of a truly literary man who was prevented from making himself renowned the world over by the adverse conditions of the ante-bellum period.

John Pendleton Kennedy and Augustus Baldwin Longstreet did not take literature so seriously as did Simms, but their stories will ever be loved by Southern people as reflective of the days of their fathers. From 1850 to 1861, some novels, mostly sentimental and sensational, were appearing from time to time.

It is only meant by this essay to suggest, there being no space for discussion, consequently many imperishable

names in the intellectual life of that gone era are not mentioned. The thoughtful and dispassionate student will know that the Old South did not fail to produce literature because of any intellectual sluggishness or shallowness, but because of physical conditions that were unpropitious, and too potent to be overcome. In fact, the attention of the Southern people was directed into other channels, where their work was of an ephemeral character.

## **STATE RIGHTS.**





## STATE RIGHTS.

By Charles Edwin Clarke—1912.

I was not a soldier in the war between the States, nor have I any desire to keep alive any spirit of animosity between the Northern and Southern sections of the United States. I have so constantly heard my people denounced as "rebels" and "traitors"—as "those who conspired to break up the Union," that I gave myself to an earnest study of the question: Is this charge true—were our fathers and brothers and kinsmen such as has been written in the so-called histories of the day? As a result of that study, my conviction is clear and strong that the accusation of treason is not true; on the contrary, the men who fought under the banner and leadership of Mr. Jefferson Davis were the men who fought for the constitutional principles given us by the founders of the federal government of the United States. If the young men of Virginia and the South, aye, all the young men of all the states would study the question more carefully, and more thoughtfully, they would know and understand the facts and the motives which caused our fathers to fight so obstinately and suffer the loss of all but honor.

The proceedings of the convention of 1787 which met in Philadelphia in May and adjourned in September of the same year, will probably explain better the rights of the States than anything else.

It is a fact known from the history of each state that the men who composed the Convention of 1787, were sent to Philadelphia by the action and authority of each state sending them. They were enrolled as members from their respective states, and as members of their states proposed,

discussed, and adopted what are known as seven articles of the Constitution. Through the Congress of the United States sitting and acting under "the Articles of Confederation" they sent the Constitution to the legislatures of the thirteen States, by them, *i. e.*, the legislatures of the States—to be submitted to a convention of commissioners elected by the people in each State, for approval or rejection. The language in which these men record the conclusion of their work shows us on whose authority they acted and for whose benefit what they did was done: "Done in convention by the unanimous consent of the States present"—not done by the people, but by the unanimous consent of the States present—"the seventeenth day of September, in the year of our Lord, one thousand seven hundred and eighty-seven."

Article VII of the Constitution settles beyond all question the kind of government proposed by the instrument when it says: "The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the States so ratifying the same." It does not say over the States, it does not say in place of the States, but between the States. Article X, which was one of the amendments adopted according to the provisions made for amending the Constitution, plainly recognizes the existence of the States and recognizes all their original rights. It reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." If the states were merged into a national government, why reserve any rights to that which no longer exists? If they, the States, no longer have any separate existence, why reserve for them any such rights as prescribed in this article?

If the States are merged into that which is to be known as the National Government, which supercedes the States in all things, and is over the States in all things concerning the States, so that the only rights left the States is

unquestioned obedience to the National Government, why should the government be designated as that between States, when States as individual commonwealths, no longer exist? It is to any candid and earnest student the marvel of history that any man who is in the least familiar with the facts of the calling of the Convention of 1787, who had ever read the record of the results of the action of that convention, should ever question the fact of the rights of the States in the Government of the United States. Yet the student will find, written as history, such statements as this: "It has sometimes been said that the Union was in its origin a league of sovereign States, each of which surrendered a specific portion of its sovereignty to the Federal Government for the sake of the common welfare. Grave political arguments have been based upon this alleged fact; but such account of the matter is not historically true. There never was a time when Massachusetts or Virginia was an absolutely sovereign State like Holland or France" (Critical Period of American History, John Fiske, p. 90). The same author in the same treatise says: "Could a State once adopt the Constitution and then withdraw from the Union if not satisfied? Madison's reply was prompt and decisive. No such thing could ever be done, a State which had once ratified was in the Federal bond forever. The Constitution could not provide for nor contemplate its own overthrow. There could be no such thing as a Constitutional right of secession." Just here it would be well to have our attention called to some other things written as history. Mr. Motley, a man distinguished among his countrymen for learning, has written in "Rebellion Record": "It—the Constitution—was not a compact. Who ever heard of a contract to which there are no parties? The Constitution was not drawn up by the States; it was not promulgated in the name of the States; it was not ratified by the States. The States never acceded to it and possess no power to secede from it. It was ordained and established over the States by a power superior to the

States—by the people of the whole land in their aggregate capacity acting through conventions of delegates, expressly chosen for the purpose within each State, independently of the State government after the project had been framed.”

If this is a statement of a fact of history, then there exists no such thing as a State having rights. Such statements as the above have been on the breeze and abroad in the land for years. That they are errors no fair-minded man will deny. But they must be shown, and the only way to show the errors in a case, is to produce the records of the facts in the case. The first record in the case in hand is the history of the assembly known as the Convention of 1787. Who constituted this Convention? What constituted membership in this body? And how did the results of the work of the Convention become law?

On the fifteenth day of November, 1777, “Articles of Confederation and Perpetual Union” by the delegates, in Congress assembled, of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia. Under the plan of government therein provided for, known as the Government of “The United States,” the war of the Revolution was conducted and finished, when five commissioners from the British Government and five from the Government of the United States met at Paris, November 30, 1782, and signed a provisional treaty of peace. A final treaty was signed at the same place on the third of September of the following year. This treaty begins with these words: “His Britannic Majesty acknowledges the said United States”—naming each State separately as above—“to be free, sovereign and independent States; that he treats them as such, and for himself, his successors, relinquishes all claim to the government, property and territorial rights of the same, and every part thereof.” In this his Britannic Majesty means to say that he grants to the States herein mentioned that for which

they were confederated to accomplish—their separate and distinct independence. If this were not the case, why were the States mentioned by name, and why was it stipulated in the terms of the treaty that each one by name should be considered free, sovereign and independent States? Several years after peace was established, it was discovered that the United States Government did not have the authority to raise revenue and meet all exigencies of the cases that came up for the consideration of Congress. After repeated effort to get the States in their sovereign capacity to act upon these considerations, the Virginia legislature, in 1786, resolved, “that Edmund Randolph, James Madison, Jr., Walter Jones, St. George Tucker, Meriwether Smith, David Ross, William Ronald and George Mason, Esquires, be appointed commissioners who, or any five of whom, shall meet such commissioners as may be appointed by other States in the Union at a time and place to be agreed upon, to take into consideration the trade of the United States; to examine the relative situation and the trade of the said States, to consider how far a uniform system in their Commercial regulations may be necessary to their common interests and their permanent harmony; and to report to the several States such an act relative to this great object, as when unanimously ratified by them, will enable the United States in Congress assembled, to provide for the same; that the said Commissioners shall immediately transmit to the several States copies of the preceding resolutions with a circular letter requesting their concurrence therein, and proposing a time and place for the meeting aforesaid.” As only four States responded to this invitation, nothing could be done, so a general convention of all the States was called, to be held at Philadelphia, 1787, to consider the proposed provisions which have just been mentioned. This was done and was sent to the States which had appointed the Commissioners to Congress, and the executives of all the States.

But how did this convention convene? Where did those

who were members of this assembly—the convention—get their authority? The records show that all the States, except little Rhode Island, sent men commissioned by the State authorities to act for the States, as their deputies, in the business for which they were called to meet, namely, “To revise the federal constitution and adapt it to the exigencies of government, and to preserve the Union.

After the assembly convened, it was found that nothing could be done with the “Articles of Confederation,” so they resolved upon working out a new plan of government. The question then was, what plan?

Four propositions were submitted, two on the basis of a national government, two on that of a federal government. Thus we see the National and Federal parties in the convention. Those of the National party wanted to do away with every feature of federalism and provide for the establishment of a single representative republic, with the division of the powers of government into three departments. This was the Virginia plan. The Federals proposed two plans, one proposed to delegate only a few additional powers to Congress without any other change; the other plan provided not only for the delegation of additional powers, such as to lay duties on foreign imports, to regulate commerce with foreign nations, and for a division of the powers delegated into three departments named, but it also provided a complete machinery for the execution of all the federal powers conferred by a federal organization, similar to that of the States, and by which the federal character of the government would be retained. This was Jefferson’s idea exactly, which was thus: “To make us one nation as to foreign affairs, and keep up distinct in domestic ones gives the outline of the proper division of powers between the general and particular governments.” This last plan given here was adopted after considerable rehashing.

But how did the States proceed to make the Constitution the bond of union between them? They did it through

commissioners sent by each State, to the convention, and were empowered to act by the State, not by the people. Several of the States held conventions, in fact, all of them did. We will consider here the Massachusetts convention which was held to ratify the Constitution. The question which stirred the members of this convention was: were the sovereignty and rights of the States sufficiently conserved? The dread that they might not be, led the gentlemen of the convention to discuss freely, move cautiously and record their actions with great precision of words. Several of the articles of the Constitution grew out of this convention, and we notice in each one, the great care which was taken not to take away the rights of the State, article X reads: "The powers not delegated to the United States by the Constitution, nor prohibited to the States by it, are reserved to the States respectively, or to the people," which means that the Constitution explicitly declares that all powers not expressly delegated by the Constitution, are reserved to the *several States*, to be by them exercised. It is recorded that President Hancock, on the floor of the convention, said: "The objects of the proposed Constitution are defence against external enemies and promotion of tranquillity and happiness amongst the States."

In New York, as in Massachusetts, the whole contest was waged around the question of the existence and the rights of the State. The record shows that there was considerable fear that the powers delegated to the federal government might be exercised over the State government. Alexander Hamilton said, among other things, advocating the adoption of the Constitution: "Sir, the most powerful obstacle to the members of Congress betraying the interests of their constituents, is the State legislatures themselves, who will be standing bodies of observation, possessing the confidence of the people, jealous of the federal encroachments, and armed with every power to check the first essay of treachery." In every speech made in favor of adopting the Constitution, the rights of the States were

conceded, and in the final action of the convention it was especially stipulated that the powers of government may be reassumed by the people whensoever it may become necessary to their happiness. Why, the very foundation of Wilson's advocacy was that the rights of the States were recognized and secured. In speaking of the system of this government, he said: "This, instead of placing the State government in jeopardy, is founded on their existence.

On this principle its organizations depend: it must stand or fall as the State governments are secured or reserved." In the adopting act of Virginia it is expressly recorded, "that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them whensoever the same shall be perverted to their injury or oppression; and that every power not granted thereby, remains with them and at their will, and that therefore no right of any denomination can be canceled, abridged, restrained, or modified by Congress, by the Senate, or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States except in those instances in which power is given by the Constitution for those purposes."

So we see by the record of the case: First, that the convention which formulated the Constitution was composed of the deputies of the States. In all their voting they voted as States; when their work was completed it was submitted to the States for their approval or disapproval.

Secondly. We see from further examination of the record that each one of the States, in its sovereign capacity in convention of delegates chosen by the people of each State, took into consideration the Constitution sent them by the Congress of the United States and after days of discussion, all assembled and ratified the document as a bond of union known as the federal government of the Union. It was the action of the States that made it the bond of Union.



It was not the intention or purpose of the Convention of 1787 to make a consolidated government of the United States. This is seen in the fact that the word "National" was struck out, and the Government of the United States substituted for it, and this means a federal government. It is one government as to foreign affairs, and is kept distinct in domestic ones. The man who speaks of the United States government as a national one, speaks of that which has no existence. The legislative, judicial, and executive functions of the federal government have no authority apart from that granted by the Constitution. All power or authority by these functions of government is delegated by the States. To exercise any other is usurpation; to do otherwise than to use the authority delegated in the bond of union is perjury. Furthermore, the records show that the federal government is a compact *between* the States, and in no sense *over* the States. If this is questioned, article VII of the Constitution settles it beyond all cavil. This section reads: "The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States ratifying the same." In this statement the existence of the States as such is recognized and their continued existence is clearly set forth in the manner of organization of the Senate and their method of voting. According to Article IV, section 4: "The United States government shall guarantee to every State in the Union a republican form of government and shall protect each of them against invasion, and on application of the legislature or of the executive—when the legislature cannot be convened—against domestic violence." Now if the States ceased to exist, why this provision for their protection? That the government was *between* and not *over* the States was a fact accepted by all until the teaching of Story, Webster and Kent was received and promulgated by their followers. In 1798 the Virginia Resolutions, setting forth the doctrine that the federal government was a compact between the States,

was responded to with an emphatic approval by all the States. Another fact: the method of electing the President declares that this federal government is a government between the States. The President holds his office through the majority of the States voting for him, and not the majority of the people in the States. Now, if the government was one nation, the majority of all the people ought to elect the President. But from the method of choosing the President, we see the rights of the States preserved. And "it is as much the duty of the States to watch over the rights reserved as of the United States to exercise the powers which are delegated" (Journal of Hartford Convention, p. 7). Again, "But in case of deliberate, dangerous, and palpable infractions of the Constitution affecting the sovereignty of the States and liberties of the people, it is not only the right, but the duty of such State to interpose its authority for their protection in the manner best calculated to secure that end. States which have no common umpire must be their own judges and execute their own decisions." Mr. Daniel Webster says that Massachusetts "gave up all opposition" when the Supreme Court of the United States decided that the laws of which she complained were constitutional. But the records of the convention flatly contradict Mr. Webster, and show that what I have just quoted from the "Journal" is true.

It appears then to be a plain principle founded in common sense, illustrated by common practice, and essential to the nature of compacts, that where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges in the last resort, whether the bargain made has been pursued or violated. The Constitution of the United States was framed by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity as well as to the authority of the Constitution, that it rests on this legitimate and solid foundation. The States, then, being the parties to the Constitutional compact, and in their

sovereign capacity, it follows of necessity, that there can be no tribunal above their authority to decide, in the last resort, whether the compact made by them be violated; and consequently, that, as the parties to it, they must themselves decide in the last resort such questions as may be of sufficient magnitude to require their interposition.



## CAUSES OF THE CIVIL WAR.

By John McGavack, Jr.—1913.

In every great nation there has been a period of civil strife. The oppression of the citizen by those who rule has in most cases been the cause. This is exemplified in the ancient Roman empire, when the whole nation rose up and overthrew the tyrannical government; in France, during the Reign of Terror, we have the conflict of the masses against the few; the civil war in England was a fight for liberty and freedom from taxation; while in Germany we have portrayed the terrible conflict for religious liberty. So in a cursory examination of our great civil dissention, we might well regard it as one of those political upheavals common to every nation.

An interesting cause for this war is given by the historian Greg. He claims that it is a continuation of the wars of Cromwell. America is but a new England—there is a change of name but not of race. The North was settled by Puritans and the descendants from the Roundheads; the South drew its population from among the nobles and the English peerage. Thus, originally, both sections were inhabited with people, who by nature were opposed to each other, and as a consequence a difference of opinion on any question was all that was necessary for the one to attempt to prove its supremacy over the other. This plausible presentation of the question may have some ground for truth, but we can hardly take it as the direct cause of the war of the sixties.

Probably another indirect cause of this war was due to the fact that geographically the two sections of the country were vastly different. In one, industries and manufac-

turies were the rule—here the winter cold directly opposed the idea that agriculture could be the main occupation. Hence, as the acquirement of all labor saving devices produces, energy, progress and business capability was the watchword. On the other hand the fertility of the soil and climatic conditions of the sunny South easily made it the farm of not only America, but also of foreign countries. Luxury, wealth and intellectuality were its watchwords. Naturally in Congress, where the national laws were discussed and made, these two sections fought obstinately with each other, each trying to have legislation favorable to his own district, and consequently unfavorable to the other side. As long as these two parts of the country were equally represented, compromises tended to keep the factions quiescent, but when one side began to have a pronounced majority dissatisfaction at once ensued.

It is a unique coincidence that the main argument for each side was liberty—both desired it, but desired it in an entirely different way. In the North, where climatic conditions prevented slavery in any form, the cry of freedom for the negro was upon every tongue, was made the chief subject of discussion in every political speech, was heralded abroad by every newspaper with wonderful alacrity. In the South the cry of freedom came from another source—it was the cry of political freedom. The right of a state to manage her own property without interference from the national government. Their position is well given by Dr. Dabney: "History will some day place the position of these Confederate states, in this high argument, in the clearest light of her glory. The cause they undertook to defend was that of regulated, constitutional liberty, and fidelity to law and covenants, against the licentious violence of physical power. The assumptions they resisted were precisely those of that radical democracy, which deluged Europe with blood at the close of the eighteenth century, and which shook its thrones again in the convulsions of 1848; the agrarianism which, under the name of

equality, would subject all the rights of individuals to the will of the many, and acknowledged no law or ethics, save the lust of that mob which happens to be larger. \* \* \* This, in truth, was the monster whose terrific pathway among the nations, the Confederate States undertook to obstruct, in behalf of not only their own children, but of all the children of men." (Dabney's *Life of Stonewall Jackson*.)

Southern writers give "States Rights" as the primary cause of this war. Their argument was that under the constitution each state was supreme and in no way subservient to the national government. They considered the different states were bound together in a centralized form of government primarily for the protection against foreign foes. In other words they interpreted the constitution in its literal sense, and did not recognize any of the implied powers that some claimed it possessed. "The struggle or conflict, \* \* \* from its rise to its culmination, was between those, in whatever state they lived, were for maintaining our Federal system as it was established, and those who were for a consolidation of power in the central head." (Stephen's *War Between the States*.) The states were sovereign and they alone had power to regulate conditions in their own section.

This question—that of "States Rights"—is probably the primary cause for which the war was fought; but in our opinion before even this question was raised, the actual cause of the war was manifest. We refer to the many disputes regarding territory—whether or not the customs of the South or the North should prevail upon addition of new states to the Union. The Louisiana purchase of 1803 enlarged our possessions to such an extent that of necessity new states must be admitted. The dispute was whether or not this territory should be admitted as a slave or a free state. Southerners desired the first alternative, as they wished additional markets for their surplus slaves. This was a natural position for them to take, as between

the decade of 1850 and 1860 out of the total estimated value of property in the South of five billions of dollars, three and one-half billion consisted in the value of the slaves. On the other hand, the North was directly opposed to the extension of slavery—they claimed that it was below the dignity of a civilized nation to countenance of such an ancient and what they called barbarous custom. The Missouri Compromise was the direct effect of the collision of these two different sectional sentiments. If no new territory had been added to the original thirteen colonies we can safely say that history would have never had to tell the sad tale of such an awful struggle. But as new states were added just so much more was the strength or the Federal government increased—the territory received its title of statehood from the United States and not from the individual states. Naturally then, they looked up to this government as the greater and superior. Mr. Lamar, a Southern orator of considerable renown well summarizes this question: "In 1787 the states were the creators of the Federal Government; in 1861 the Federal Government was a creator of a large majority of states. In 1789 the Federal Government had derived all the powers delegated to it by the Constitution from the states. In 1861 a majority of the states derived all their powers and attributes as states from Congress under the Constitution. In 1789 the people of the United States were citizens of states originally sovereign and independent; in 1861 a vast majority of the people of the United States were citizens of states that were originally mere dependencies of the Federal Government, which was the author and giver of their political being." Thus, unconscious to most of the political leaders of that day, the centralization of the national government was rapidly increasing.

It is held by some—and there seems to be much truth in the statement—that one of the greatest statesmen this country has ever produced was the motive force which separated the North and the South. This prominent, if



somewhat unenviable position is given to John C. Calhoun, the skilled orator of the nineteenth century. Although having died some ten years before the war actually broke out, through his speeches, writings and wonderful debates he so instilled his ideas into the minds of the Southern people, that the South was already prepared for the fatal leap from the precipice to which he had led it. Calhoun was a constitutionalist, but he obeyed a greater power than the Constitution—the necessity of preserving society of which he was a part. His strength lay in believing in the wisdom and righteousness of the southern social organization. Although at all times he begged the northern speakers to drop the subject of slavery from their discussion, he himself was ever an insistent discussor. “The poor and uneducated are increasing; there is no power in a republican government to repress them; their number and disorderly tempers will make them in the end efficient enemies of the men of property. They have the right to vote, they will finally control your elections, and by bad laws or by violence they will invade your houses and turn you out. Education will do nothing for them; they will not give it to their children; it will do them no good if they do. They are hopelessly doomed as a mass to poverty, from generation to generation; and from the political franchise they will increase in influence and desperation until they overturn you. The institution of slavery cuts off this evil by the root. The whole body of our servants, whether in the family or in the field, are removed from all influence upon the white class by the denial of all political rights.”

We, the people of the present day, can look back upon the great struggle of the sixties without arousing the same feelings that were experienced by the people immediately before the war. Then the slightest word or act would stir up opposition that was well nigh impossible to stop. And it was this lack of foresight by some that war was precipitated as soon as it was; they seemed not to realize how high the feeling was between the different sections of the

country. It was such books as "Uncle Tom's Cabin" that caused resentment and hatred of the north in the southern mind. The reason is not hard to see and was but a natural consequence on account of the sentiments the book contained. Its object was to give an account of slave life in the South, but instead of portraying the average conditions of the slaves, the authoress used for material the most extreme cases of a slave owner's cruelty, that she could find. Thus the influence of "Uncle Tom's Cabin," such a book that drew with irresistible power a picture of slavery which outside the South was accepted the world over as true of the whole, gave new force to the resistance to the fugitive-slave-law and swept the North into an opposition which culminated in the formation of the Republican party, "developed from an abstract antagonism into a concrete civil war in Kansas, and, in the election of 1856, reared a spectre, the mere apprehension of which, to the South, was to end in secession."

The first shock of war came early in October, 1859, when the country was startled by news of the seizure of the United States arsenal at Harper's Ferry by the well known fanatic John Brown. His object was to free the negroes; the result that actually happened was to increase the sentiment for separation between the two great sections of our country. It was the watchword for the South to arm themselves—to prepare for the bloody struggle that was to follow. Dr. Dabney writing immediately after the war, epitomized that episode in the following manner: "This mad attempt of a handful of vulgar cut-throats, and its condign punishment, would have been a very trivial affair to the southern people, but for the manner by which it was regarded by the people of the North. Their presses, pulpits, public meetings and conversations, disclosed such a hatred to the South and its institutions, as to lead them to justify the crime, involving as it did the most aggravated robbery, treason, and murder; to deny the right of Virginia to punish it; to villify the state in conse-

quence with torrents of abuse perfectly demoniacal; to threaten loudly the assassination of her magistrates for the performance of their duty; and to exalt the blood-thirsty fanatic who led the party, to a public apotheosis. When the people of the South witnessed these things, it caused a shock of grief and indignation. The most sober men saw in the event, insignificant in itself, a symptom of momentous importance, and recognized the truth that the grand collision was near at hand. Loyalty to the Union was still unbroken; and the purpose was universal, to act only on the defensive, and to fulfil to the end every obligation to the Constitution." Such indeed was the result of what is known as the John Brown's Raid. Even if sincere in his purpose, could fail to have seen what a dire calamity would happen to such an undertaking.

So far we have presented what might be called the early causes of the civil war. Now it is our desire to show the different events that directly preceded the conflict, and show how these brought the war on sooner than otherwise would have been the case.

In the late part of the year 1860 the presidential election occurred. The democratic party was fearfully divided; those of the North would not adhere to any platform that contained the extreme principles held by the southern section of the party; on the other hand the South would not accept the mild platform of the northern democrats. Consequently no nominee was selected at the Charleston Convention, and when the polls opened on election day the ballot contained the names of three democratic candidates for president—Douglas, representing the northern democrats, Bell and Breckenridge representing the two factions in the South. Hence, from such a division it was no surprise when Lincoln, the Republican candidate, was elected although Douglas came a close second as regards popular vote. If the democrats could only have made a compromise and nominated but one candidate the election, without a doubt, would have been theirs.

In the meanwhile Buchanan was at the head of the national government. It was the incompetence of this one man, more than any other, that caused the South, or rather allowed the South to secede. He was unable to make up his mind to do anything, and always sought to work on the lines of least resistance, and was determined, he should have to leave the management of this terrible storm, of which he should have been the controlling force, to his successor. The hostility of the South to the Union, caused by Lincoln's election, should have been met right at the very start. If the forts at Charleston harbor, those along the Florida coast, the one at Mobile, Bay, and likewise those on the Mississippi River had been reoccupied and fortified after they had been seized by the different states, the United States government would have been well prepared to hinder the southern states from any such rash action. Such a policy was not only expedient but was within the bounds of the central government to perform. The forts belonged to the Union not to the individual states; they were equipped with supplies and troops furnished and paid for out of the national treasury; the states could not protest if they were manned by federal troops. This opportunity of putting a peaceful end to this intense excitement was woefully neglected by the dilatory president. The South took advantage of this fearful neglect, and before Lincoln was inaugurated on the fourth of March, every fort south of Mason and Dixon's line, with the exception of Sumpter, was occupied by the southern state militia.

In connection with this might be mentioned Buchanan's cabinet. Of the whole number there was scarcely one upon whom he could depend for impartial advice. The majority of these officials were southern men, and consequently their chief aim was to attain the sanction of the president to measures favorable to southern interests. And as the spirit of secession strengthened, much evidence is shown that these men, supposed to represent the Union, were

scarcely less than conspirators plotting for its downfall. "Many writers have depreciated applying the word 'conspiracy' to the secession movement; but if the word is suitable for a secret, long-continued and concerted movement, the term is just. On January 5th, Senators Davis and Brown of Mississippi; Hemphill and Wigfall, of Texas; Slidell and Benjamin, of Louisiana; Iverson and Toombs, of Georgia; Johnson, of Arkansas; Clay of Alabama; Yulee and Mallory, of Florida, met in Washington and passed resolutions for the immediate secession of their respective states, and for a convention at Montgomery, Alabama, to meet not later than February 16, to organize a southern confederacy; they requested instructions from their friends as to whether the delegations were to remain in Congress until March 4th, so as to defeat threatened hostile legislation, as one of them privately expressed it, "By remaining in our places \* \* \* it is thought we can keep the hands of Mr. Buchanan tied and disable the Republicans from effecting any legislation which will strengthen the hands of the incoming administration." Extraordinary ethics which could permit men sworn to support the Constitution, and paid out of the Federal treasury, to use their official position to conspire for the downfall of their government." (Chadwick's Causes of the Civil War.) The aim of these southern leaders certainly succeeded; they not only prevented the national government from protecting its interests in the South, but it also gave the South sufficient time to prepare for the impending struggle which they saw no way to avoid.

The election of Lincoln was the watchword for the South to withdraw from the Union. The reason for this seemed to be more of a personal antipathy for the man himself and not because of the principles or party he supported. They seemed to recognize in him a man of great capabilities, one that would not hesitate to do what he considered right. They knew that his sympathies were against slavery. But right here is where they misjudged

the man. Lincoln although personally opposed to slavery, had no power whatever to interfere in any way with slave states; he recognized their right to do as they pleased in this matter. The platform upon which he was elected was emphatic in asserting that such states were beyond the pale of the federal government, and its only point in regard to this question was that slavery should not be extended to the territories. His position was as follows: "I intend in that matter to accommodate the people in the several localities, if they themselves will allow me to accommodate them. In one word, I never have been, am not now, and probably never shall be in a mood of harassing the people either North or South. On the territorial question I am inflexible, \* \* \* on that there is a difference between you and us; and it is the only substantial difference. You think slavery is right and ought to be extended; we think it is wrong and ought to be restricted. For this neither has any just occasion to be angry with the other." (A Letter by President Lincoln to Mr. Gilmer of North Carolina.)

In his inaugural address we have these words: "The power confided to me will be used to hold, occupy and possess the property and places belonging to the government, and to collect the duties and imports; but beyond what may be necessary for these objects there will be no invasion, no using of force against or among the people anywhere." Here we have the keynote of the situation; Lincoln claimed that it was his solemn duty to retake and hold the U. S. forts situated in the South; the southern leaders held that it was the right of the individual states to guard these points of advantage. Logical reasoning would seem to point that Lincoln was right in his reasoning—but that does not come into the question. The South resisted and the great struggle for supremacy was started when the national flag was fired upon at Fort Sumpter.

The war was on, and but little did the South, with its traditions and ancient institutions, realize what a moment-

ous struggle it had entered upon. They trusted in their courage, in their cause and not in their power for success. "Every pure and noble man, every most devout soldier, the generous southern women, the virtuous and cultivated citizens, the incorruptible judges of the law, the venerable and holy ministers of religion, all these committed their lives and fortunes, and sacred honor to the defence of the Confederate States, as one man." The fight was inevitable, but never in the history of nations has such a struggle ever been recorded—never before has any governmental principle caused the shedding of such streams of blood!





## THE SECESSION OF VIRGINIA.

By Ernest Trice Thompson—1914.

The war of 1861, call it by what name you will, was the result of many forces. The secession of the Southern States is variously explained, and in the casual judgment, the reason for the action of each is the same. The hasty generalizer will assure you that the South—meaning thereby the whole of the seceding states—flew to arms in order to extend slavery into the territories or to prevent its threatened destruction within her own borders, or that no longer in sympathy with the ideals of the Republic, she wantonly desired its destruction. Whether or not this be true of the Cotton States we need not discuss. To Virginia, and in consequence to the people of Virginia, the insinuation is a grave injustice. It was on the Old Dominion that the brunt of the conflict rested. She furnished its great leaders, she furnished thousands of the flower of her youth. Her lands were rent, and torn asunder, but to charge that her sons were given to the sword, and her bosom as the battle-ground for the fiercest wars of modern times because for sooth "Virginia revered the institution of slavery, and from selfish motives fought to make more sure the muniments of its existence; that she desired the destruction of the union, and the degenerate abandonment of the inspiring dreams of liberty, and progress, which it was designed to assure" is a proposition as false as it is unwarrantable. Of a truth Virginia could not help but cast in her lot with that of her more impetuous sisters to the South; otherwise, she violated both duty and honor. The exercise of powers in her conception clearly adverse to

the principals of divine and human right, on which the Republic had been based, made clear her way. For in Virginia's eyes the right of the Cotton States to withdraw from the Union which they had formed, inexpedient though it be, was God-given, and inalienable and coercion was tyranny. "Thus her sense of honor, as well as the imperilled right of self-government, impelled her to battle."

Let us consider whether Virginia seceded either in order that slavery might be extended into the territories or that it might be maintained within her own borders; and note first her record both as a territory and as a state in regard to the institution.

Slaves were introduced steadily into Virginia during the one hundred and fifty odd years of her colonial existence. But it was done over, and in spite of the protests, the appeals, and the statutes of the Colonial Legislature and of her most prominent citizens. "The great personages interested in the slave trade proved more influential with the king than the prayers of his imperilled people." No other consideration was more potent than this position of the crown in regard to the slave traffic in placing Virginia in the fore-front of the Revolution. Hardly had Independence been declared than the General Assembly of the new state prohibited the further continuance of slave importation; thus, to Virginia, falls the honor of being the first community of modern times to prohibit this pernicious traffic. In the Ordinance of 1784, Jefferson attempted to prohibit slavery from all national territory. Three years later an ordinance was passed eliminating it from the Northwest Territory, and this final result was due largely to the work of Virginia. Projects for the emancipation of the slaves were rendered more difficult with every fresh importation. With the adoption of the Federal Constitution there was offered the supreme opportunity for suppressing the traffic, yet the slave trade was legalized for the further period of twenty years, and this was done by "a bargain between New England, and the far South," and despite the

vehement resistance of Virginia. Henceforth hers was the ceaseless task of guarding against further importation from home or abroad, of devising some practicable plan for gradually emancipating the slaves in her midst, and meanwhile to continue day by day the work of teaching these children of the Dark Continent an intelligible language, the use of tools, the necessity for labor, and the rudiments of morality, and religion."

Nonetheless the attitude of Virginia in regard to the slave traffic was one of uncompromising hostility, and her sons sought actively not only to restrict its growth, but to drive it from the seas. At the first meeting of the Continental Congress, the representatives of Virginia had declared "The abolition of domestic slavery is the great object of desire in those colonies, where it was unhappily introduced in their infant state." This view continued to be ascribed to by the ablest leaders of the State down to the outbreak of the Civil War.

In the meantime Virginia began to permit and to encourage gradual emancipation, which under British rule had been seriously restricted. Under the law of 1785 slaves brought into the State were allowed their freedom at the expiration of twelve months, and many statutes were enacted protecting the rights of the blacks. As the result of these acts the number of the free negroes increased rapidly, until the presence of a large number of free blacks possessing neither the restrictions of the slaves nor the privileges of the whites began to constitute a serious problem. Nevertheless the work of emancipation continued and the hostility to the institution of slavery became more widespread among the people. This anti-slavery sentiment continued up to the year 1832, when it received a severe setback by the tragic event of August, 1831. To the disastrous effects of this occurrence must be added the reactionary influence of the Abolitionists and of the failure of the General Assembly in 1832 to devise any plan for the gradual abolition of the slaves.

The momentous event of the summer of 1831 was the Southampton insurrection, led by Nat Turner, in which fifty-seven whites, mostly women and children, were brutally massacred. The event seemed the more portentous when it was declared that Turner was a slave to whom the privilege of education had been accorded, and that his chief lieutenant was a free negro; nor was the suspicion absent of instigation without the State. When the General Assembly met in December it was at once besieged with petitions, some praying that the free blacks might be removed from the State, others that some scheme might be devised for gradual emancipation. The Assembly gave its careful consideration to a number of abolition proposals, but found none practicable. This failure of the General Assembly brought despair to thousands of Virginians, who had sought relief in this direction. With the lesson of the Nat Turner insurrection still fresh in their minds, "many accepted the institution as permanent, and busied themselves marshalling arguments in vindication of its rightfulness and in refuting with growing bitterness the assaults of its opponents."

An even more powerful influence on the attitude of anti-slavery men was the activity of the Abolitionists in the North. "Unlike the anti-slavery men of former years, this new school not only attacked the institution of slavery but the morality of slave holders and their sympathizers. In their fierce arraignments not only were the humane and considerate linked in infamy with the cruel and intolerant, but the whole population of the slave owning states, their civilization and their morals were the object of unrelenting and incessant assaults. Thus thousands sincerely desiring the abolition of slavery were driven to silence or into the ranks of its apologists in the widespread and indignant determination of Virginians to resent these libels upon their character and defeat these attempts to excite servile insurrections."

Yet in spite of such conditions the work of emancipa-

tion was continued; convinced that in dispersion or colonization beyond her borders lay the surest and only road to ultimate emancipation and to relief from the racial problems incidental to slavery, the Virginian Assembly was most liberal in her assistance, and contributed large funds for this purpose. The leading people of Virginia were active both in the work of the American Colonization Society and the Colonization Society of Virginia, established in 1828. In addition, many slaveholders emancipated and colonized their slaves out of their own means. The entire work was hindered moreover both by the violent pro-slavery men of the South and by the Abolitionists of the North, by the latter, among other reasons, because such an alleviation of conditions rendered more distant the day of universal and immediate abolition. But Virginia had reached the conclusion that by no other method was abolition practicable. The principal of emancipation had not been abandoned but rationalized. And to this view subscribed the sanest minds of the time, for instance, Jefferson, Clay, Lincoln. A little investigation will amply demonstrate that the great mass of prominent Virginians from Washington to Lee were decidedly opposed to the institution of slavery. The fact that in spite of statutes and the efforts of masters and others to settle freed slaves at points beyond the state, the Federal census of 1860 gives the number within her borders at fifty-eight thousand and forty-two would indicate the real attitude of the people.

It is a common misconception that the great majority of Virginians were slave holders, and that emancipation was opposed from pecuniary or selfish motives. Yet out of a white population of 1,047,299, only 52,128 were owners of slaves, and of these one-half held only from one to four slaves, while but 114 persons in the whole state owned as many as a hundred each. The slaves again were not distributed throughout the state, but were localized in well defined districts. The body of the people were small farmers, wage earners, mechanics, merchants and profes-

sional men. They held no pecuniary interest in slavery nor did even the poorest fear for "the preservation of their social status" from its abolition.

Furthermore the existence of the institution was a positive disadvantage to the material prosperity of Virginia. Not only this, but it was recognized as such by the people themselves, as can be verified by the published sentiments of Virginians during the three decades preceding the War. "Not all of the people of Virginia lived in a Fool's Paradise. They balanced the known burdens of slavery against the anticipated burdens of emancipation—they compared the dangers and losses of present conditions with the problems of a future in which the slaves would be free, yet still in their midst; but by no calculation could the continuance of slavery be upheld because of the pecuniary benefits derived from its existence."

Yet it is charged that though slave labor was not profitable in Virginia, the rearing of slaves for sale in other states had become so, and that its advantages had destroyed all sentiment in favor of emancipation, until in 1861 the people "stood ready to fight for the maintenance of slavery and the inter-state slave trade." Yet no offense so filled the people of Virginia with utter loathing and contempt as that of buying and selling slaves, nor could any ostracism be more complete than that practiced against the slave-dealer and his unfortunate descendants, a fact attested to by Abraham Lincoln himself. It is impossible to reconcile the existence of such a public sentiment with the charge that Virginia had degenerated into a "mother of slave breeders." As a matter of fact the feeling in Virginia against slavery did not decline, as charged, with the invention of the cotton gin and the abolition of the foreign slave traffic, but grew continuously stronger until 1832, at which time it received the setback previously mentioned. Undoubtedly there were men who despite the opprobrium attached were willing to buy slaves in Virginia and sell them at a profit elsewhere. But the number of slaves who left

Virginia annually, all of whom are erroneously assigned to this nefarious traffic, was composed much more of the ex-slaves of the colonization societies, slaves accompanying their masters, who each year emigrated in great numbers to the newer states of Kentucky, Missouri, and the South, and slaves who were transferred merely to other plantations.

As further evidence that the people of Virginia did not fight for the "protection of slavery and slave property" it need only be recalled how small was the proportion of the population who were slave holders. Significant is the fact that the proportion of slave holders enlisted in the Southern armies was even smaller. Nor is it true, as sometimes charged, that men who owned no slaves, were yet led into battle by slave owners. The most notable leaders furnished by the state, including such men as Robert E. Lee, Stonewall Jackson, Joseph E. Johnson, A. P. Hill and J. E. B. Stuart, were not slave holders.

Emancipation in Virginia as has been stated was embarrassed by insuperable difficulties. First must be considered the legal rights of the slave holders and their creditors. The slave holders could not be justly deprived of the labor on which they depended without due compensation. Furthermore on them would devolve the expense of caring for "the poor, the afflicted, and the criminal classes of the ex-slaves, not to mention the cost of educating the rising generation." The creditors likewise must be considered. From what source was such a fund available? In the second place the moral and physical wellbeing of the slaves discouraged emancipation. The freed slaves both in Virginia, and in the North were confessedly in a poorer condition than their brothers in bonds. Education and training must go hand in hand with freedom, and for the immense outlay necessary Virginia was admittedly not prepared. Gradual colonization was the only rational remedy, and this remedy was extended up to the time of the Civil War. Again there were the social and political interests

of the State. No one could picture the outcome of universal emancipation, or how the presence of such numbers of freedmen would affect the welfare of the State. The presence of a comparatively few free negroes in the States of the North could offer no assurance, while the voice of history was ominous with forboding. President Lincoln in pleading for the support of the North for his first Proclamation of Emancipation, in concluding, called to mind that, after all, the North could decide for itself whether it would receive the freed men, but with the South there was no alternation. "To these inherent difficulties should be superadded the lack of free discussion, and the growth of bitterness and reactionary sentiments occasioned largely by partisan and oftentimes criminal investigation coming from beyond the state."

The three points of conflict in regard to the institution of slavery were "the right and obligation of the Federal Government to prevent by legislation slaveholders from emigrating into the territories with their slaves; the duty of the Federal Government to provide through its officials for the capture and return to their owners of fugitive slaves, and the existence or abolition of slavery in the Southern States." To come to a clearer understanding of whether or not the secession of Virginia was prompted by a desire to extend or perpetuate the institution, consider what were the relations to the subject of the Federal Government, the Republican party, certain of the Northern States, and the Abolitionists.

It is clear that Virginia had no differences with the Federal Government in regard to these points of issue.

As for the Republican party, in spite of pro-campaign declarations, "months before the date of Virginia's secession, the Republican Party gave unequivocal assurance of its purpose to accord slaveholders the right to carry slaves into the territories"; the party did not repeal the Fugitive Slave laws and Lincoln pledged their enforcement; while the platform itself stated its intention to interfere in no



way with the institution in those states where it was legally recognized, and Congress on meeting adopted a constitutional amendment to this effect.

- Difficulty with certain of the Northern States arose over their failure to abide by the Fugitive Slave Laws and the passage of Personal Liberty Laws in direct contradiction to the former. Much ill feeling was engendered by this attitude, and even the support of the Federal Government was inadequate to protect the interests of the South. Yet such a state of affairs cannot be considered as an incentive to secession. Its effects were rather to the contrary. "In the Union some protection was secured to the state with respect to the rights thus menaced. Outside of the Union every such benefit was lost, and the state stood absolutely without redress."

Nor was secession a cure for the grievances of Virginia or her slaveholders against the Abolitionists. These tireless agitators sought heart and soul to destroy the slave institution. In the stormiest days before the outbreak of hostilities, while others cried peace, they denounced the Union and demanded slavery's immediate abolition. The only defense of the South lay on the "aegis of the constitution." The Abolitionists, well aware of this fact, advocated zealously the dissolution of the Union and rejoiced at the news of secession.

"By secession the South would forfeit all the benefits of the Fugitive Slave law. By secession she would surrender her interest in the territories and all claim of right to introduce slaves therein. By secession she would lose the strong arm of the National Government to defend her against assaults, whether by lawless bands or the legislative enactments of hostile states. Even with respect to servile insurrections her withdrawal from the Union would in no way abate the danger, but only lessen her power to cope with the problem." It was not to preserve slavery that Virginia seceded, but to preserve her self respect. It was not to resist a Proclamation of Emancipation that

Virginia seceded, but to resist a Proclamation of War, in which she was called upon to attack the constitutional rights of state supremacy. The first Proclamation of Emancipation was to free the slaves only of those states which remained in rebellion. Virginia's attitude was not changed, for indeed it was not affected. It is clear that Virginia did not secede in order to extend slavery into the territories, or to prevent its threatened destruction within her own borders.

Nor did Virginia secede from a wanton desire to destroy the Union or from hostility to the ideals of its founders. It is needless to recall the supreme part played by Virginia in making the Union. With such a past would she with wanton hands destroy the Union of which she was in large measure the creator? Rather did not John Janney, President of the Virginia Convention in 1861, speak the sentiment of Virginia when he declared "Causes which have passed, and are daily passing into history, which will set its seal upon them, but which I do not mean to review have brought the constitution and the Union into imminent peril, and Virginia has come to the rescue. It is what the whole country expected of her; her pride as well as her patriotism, her interest as well as her honor, called upon her with an emphasis she could not disregard to save the monuments of her own glory."

Virginia, foremost among the States, sought to reconcile the opposing factions. South Carolina had hardly seceded, and the Cotton States were still considering similar measures, when the General Assembly of Virginia met in special session. The precipitate action of South Carolina was deplored, though the right of secession was affirmed, and resolutions were passed inviting the States of the Union "to unite with Virginia in an earnest effort to adjust the present unhappy controversies" by appointing peace commissioners to meet in the City of Washington. Commissioners were also despatched to Washington and to the States of the South to urge peaceful procedure. The

peace conference, representing twenty states, presided over by John Tyler of Virginia, adjourned with no results. "The pathetic appeals" of Virginia's representatives were in marked contrast with many expressions coming from her sister States, North and South. At the same time, despite her protests, the Cotton States declared for secession.

Meanwhile the General Assembly had provided for a convention "to take under consideration the problems and dangers of the hour." In the election of delegates, the people of Virginia showed unmistakably that they were strongly opposed to secession. Had the election gone otherwise it was not doubted that all of the slave states would have taken action.

This convention of anti-secession sympathies waited to determine the policy of the incoming administration toward the seceding states before themselves taking action. Charles Francis Adams, alluding to the crisis says: "So now the issue shifted. It became a question not of slavery, or of the wisdom, or even the expediency of secession, but of the right of the National Government to coerce a sovereign state. This, at the time, was well understood." No one doubted what Virginia's course would be if she were called upon to decide for or against coercion.

The inaugural address of Lincoln was variously construed. To some it foreshadowed coercion, to others moderation. But the balance of power in the Virginia Assembly "clung tenaciously to the hope that some adjustment might yet be perfected between the authorities of the Union and those of the seceded states, and thus the alternative of submitting to coercion or seceding from the Union might never be presented to the people of Virginia." For a month and a half the Convention debated, urged one way and the other by the frantic appeals of both South and North.

On the fourth of April it defeated overwhelmingly a resolution to secede. On the 15th Lincoln issued his proclamation calling for an army of seventy-five thousand

men. Two days later, "after strong men had spoken for or against secession with sorrowful hearts and in voices trembling with emotion," the Convention passed the ordinance of secession. A month later the action of the Convention was ratified by a vote of 128,884 to 32,134. "This action was the logical and inevitable result of the President's Proclamation." The people of Virginia believed some that it was a constitutional, others that it was a revolutionary, right to secede. No body of men had the right to invade such territory, or defeat such aspirations by the sword. Rather than draw their swords against a free people, they would draw in their defense.

Thus was precipitated Virginia's secession. To many it was a gladsome event, but to the majority of her people it was sad and pathetic. Yet sorrow was mingled with determination, and nobly did Virginia defend her soil.

**HALF A MAN.**



## HALF A MAN.

*The Free Negro in Virginia 1619-1865.*

By R. E. Warwick—1915.

The history of the free negro in the slave States formed one of the most interesting and yet most illusive chapters in the annals of slavery in this country. And it seems especially appropriate to picture the condition of the free black in Virginia, the State which initially received the African, and in which the institution of slavery was perhaps the most firmly established. Here the negro first made his appearance as a servant in bondage and as a free man; here he first emplantad his lazy dialect, his superstitions, his charming folk-lore; here he most thoroughly cultivated a need for his presence,—and here, if anywhere, conditions approached the ideal for his existence. Through hearsay and tradition, we are tolerably familiar with the negro as a servant and a slave, but the position occupied by the free negro in ante-bellum times is surprisingly obscure.

The conditions which made this question so unique and peculiarly interesting in Virginia were that in this State only was there so large a free colored element living in a society so vitally connected with and dependent upon slavery. It requires little imagination to see why a free negro population numbering many thousand between 1800 and 1860, and living among a slave population almost as numerous as the dominant white element, created economical and social problems far more perplexing than those of New England, nor did a free negro element in a population of one to about eight slaves, act in any sense as an aid to facilitating the association of the two races. From 1619

when "About the last of August came in a Dutch man of Warre that sold us twenty negars,"\* until the middle of the eighteenth century no satisfactory statistics of the free negro in the colony (as Virginia then was) can be obtained. After 1782, however, rough estimates may be replaced by figures from the States' enumeration. The unparalleled increase in the free negro class which followed the repeal in 1782 of certain restrictions on manumission, and also the relative numbers of free colored persons, slaves and whites in Virginia may be seen from the following table, prepared from Federal decennial censuses:

	1790	1820	1840	1860
Free Colored	12,866	36,875	49,841	58,042
Slave	292,627	425,148	448,988	490,865
White	442,117	603,681	740,968	1,047,299
Total	<hr/> 747,610	<hr/> 1,065,404	<hr/> 1,239,797	<hr/> 1,596,206

From these figures, however, one fails to get a correct conception of the significance of the presence of the free black, unless the question of his distribution in the State is considered. Had the colored population been equally scattered throughout the white population, the effect would have been different,—but in the mountainous half of the State, which even as early as 1800 contained half of the whites, free negroes were so scarce as to be an almost negligible factor, whereas from the census of 1860, it appears that the free negroes in the Tidewater and Piedmont sections were between  $1/6$  and  $1/7$  of the colored and about  $1/14$  of the entire population. Again, as between rural and urban communities, the latter, as might be expected had the larger share of free blacks. As an example,—in 1790, when the average ratio of free negroes to slaves and whites in the Tidewater section was 1 to 18, this element in Petersburg constituted  $1/4$  of the colored population and were to the whites as 1 to  $41\frac{1}{2}$ . Thus it is apparent

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\*Works of Captain John Smith—page 541.



that the free negro population was concentrated largely in the eastern section of the State and in addition came in contact with only about one-half of the white population.

As to the origin of the free negro class, there were many popular misconceptions. We find many contending that the first negroes brought into Virginia in 1619 were from the very outset regarded and held as slaves for life; that they, and all Africans who came after them, experienced immediately upon entering this State a perpetual loss of liberty; and that the free negro class was nothing but a divergence from, or a by-product of, slavery, depending for its origin and existence upon the distintegration of this institution. Such erroneous ideas may be righted by recalling the elementary and fundamental differences between the terms "servant" and "slave,"—the loss of liberty of the servant being temporary, the bondage of the slave perpetual. For the white population in the Virginia colony had not been familiar in England with any system of *slavery*, and had only developed in this Commonwealth a system of *servitude or indenture* similar to that in the mother country;—hence the first Africans became servants in the condition to the status of white servants, being entitled to freedom after a certain term of service. Now, whenever according to the laws or customs of a colony, negroes came to be held as servants without a future right to freedom, then may be found the beginnings of slavery in that colony. In Virginia, custom soon supplied all the authority that appeared to be necessary. Savigny says, however, "When the progress of the times calls for a new institution \* \* \* there is necessarily a period of transition in which the law is uncertain and statute law is required to put an end to the uncertainty." The time of transition in Virginia from slavery sanctioned by custom-law to slavery sanctioned by statute-law was the decade between 1660 and 1670. Knowing, therefore, that true slavery developed only slightly before 1660, the date of the first act recognizing it, it is certain that the institution of

servitude and indenture gave rise during the period from 1619 to 1660 to the earliest beginnings of the free negro class.

But by far the most prolific source from which this class recruited its numbers after 1670,—and even before that date,—was the practice of manumission. There were two general methods by which slaves in Virginia were set free during the life of the institution of slavery:—namely, public manumission, *i. e.*, by act of legislature; and private manumission,—by last will and testament, or by deed. The former method does not require detailed explanation. The Colonial House of Burgesses, as well as the State Legislature later, inferred from its right to make, its right to unmake, a slave, and this right, though seldom exercised, went unchallenged. But what was the origin of the right of a private individual to bestow civil liberties and privileges upon a slave who in the eyes of the law, was a *thing*? The first statute which recognized the slave-owner's right to make free men of slaves was enacted in 1691, but the fact that the act was a rigid restriction upon the right shows that this law did not originate the privilege. In fact we must of necessity return again to a study of the close relations of indentured servitude and slavery in the seventeenth century, for an explanation of the practice. Before slavery as an institution had fully diverged from servitude by indenture, it borrowed from the latter, the practice of manumission by individual owners,—for under this system the term of servitude for which the servant was bound out, not the servant himself, was regarded as property. Thus when a slave was discharged with a pledge from his master that no further service would be demanded, he went forth as a free man just as did a servant freed at the expiration of a period of contract servitude.

Whether the frequency of private manumission in the seventeenth century was a result more of a strong body of sentiment favorable to freedom than of an immature development of the system of slavery is a question not to be

answered with precision. Certain it is, however, that by the year 1690, the free negro class had so expanded as to have become an object of fear and suspicion, and from this date until economic conditions in the nineteenth century automatically checked the practice, various laws were enforced restricting manumission. That there was an underlying sentiment in favor of it, however, may be seen from an isolated case,—for instance, the removal in 1782 of restraints, was like the sudden destruction of a dam before the increasing impetus of a swollen stream. The free negro population in the State at that time, less than 3,000, but the product of a century and a quarter's growth,—was more than doubled in the space of two years. But the most far-reaching cause for the general decline of private manumission was the radical change in the economical aspects of slave-holding in the last sixty years of its existence. The invention of the cotton gin, the abolition of the foreign slave trade in 1808, coupled with the rapid growth of the domestic slave trade, each in its way created a demand for Virginia slaves,—and money, then as now, often conquered sentiment. Thus after 1800 manumission as an agent for augmenting the free negro class was almost negligible.

Rough as was the road to freedom for the African during the period between 1619 and 1865, still more rocky and beset with pitfalls was the path which the negro, surrendered to his own care, was forced to travel. A glimpse of the conditons—legal, social and economical,—of the free negro, whether he remained in the State or attempted to migrate, will bring to us a slight realization of his position as "half a man." In considering the first, it is well to note that the legal status of free individuals involves the usual two-fold relation of persons to the State,—that of receiver of protection from the government, and that of active participant in its affairs. With regard to the status of the free negro, in this double relation, the question which first demands an answer is: What protection

was afforded him in the rights of property and in the enjoyment of liberty? The common-law right to own and alienate property was at an early date recognized;—and it stands unique as the one privilege which suffered fewer limitations in the possession of the free negro than any of the others usually regarded as fundamental to a free status. The most remarkable of his rights, however, was that of owning slaves. Indeed for more than twenty years, from the time of the free negroes' first appearance in the courts, there was no legal restriction upon the right to own indentured *white* servants,—and such reversal of the usual order was attempted, if we may make inferences from legislation against such practice in 1670. Not before 1832 were free negroes forbidden to own negro slaves and this right was quite commonly exercised. Complete as was the right of the free colored man to property, he was never-the-less denied,—and for obvious reasons,—the ownership of dogs, “fire-locks,” poisonous drugs, intoxicants, and (after 1832) slaves.

But the laws of Virginia extended their protection not only to the property of the free negro, but to his life and liberty as well. In many particulars, however, they differed directly or were differently interpreted from those shielding the white population,—as a remarkable example of which may be cited the principle that in cases in which the freedom of a negro was disputed, the burden of proof was upon the negro to show that he was free. Contrary to the recognized English law, he was regarded as guilty until his innocence was established by evidence. Again, the free negro suffered penalties for minor offenses, similar to those inflicted on slaves for like violations. Throughout the entire period, whipping, “not exceeding thirty-nine lashes on the bare back, well laid on,”\* instead of a fine as for a white offender, was the usual punishment for the free negro as well as for his kinsman in bondage. To us the privilege to go from place to place appears as a privilege

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\*Virginia Code 1782—page 428.

fundamental to real freedom,—yet in few other respects was the liberty of the free negro more restricted than in this. Still, among a slave population, a roving negro element was beyond suffrance. Possibly the most extraordinary privilege possessed by any person in the United States during the continuance of slavery was the free black's right to choose a master and go into voluntary bondage. Liberty to become a slave was one variety which a white man could not have enjoyed had he wished to. It might be surmised that this right was of a type higher than the fundamental, inherent rights enunciated by the constitutional fathers, for in as much as “the status of the offspring follows the status of the mother”<sup>\*</sup> a free negress who exercised it deprived her offspring of liberty, and subjected it to perpetual tyranny. It may be remarked, however, that hard as was the lot of the ante-bellum free negro, the courts had few petitioners seeking the refuge of slavery.

The second question, no less essential to an adequate treatment of the free black's legal status is that involving the extent of his participation in the affairs of government. From a very early date in the history of the colony up to the close of the War between the States, military service was required of the free man of color,—a special act allowing negroes in the state militia to keep one gun. In the matter of taxation, too, the free negro stood in a relation to the government as its supporter. Far from being exempt from taxes, he was, as the records show, usually required to pay a higher poll tax than the white man. Yet while we see that the negro was in every way treated as a *supporter* of the government, his services in official capacities were neither demanded nor accepted in Virginia. Even as early as 1670 his rights of suffrage were restricted, and in 1732 a law was formulated which specifically denied him the right to vote. Thus the interesting query arises: Was the free negro really a citizen, either of the Commonwealth or of the United States? He was undoubtedly a

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<sup>\*</sup>Virginia Act 1662.

subject of both, but if by the term "citizen" we mean a subject having full civil and political rights, this individual was a citizen of neither,—he was after 1732 "a man without a country." He could not bear witness except in cases involving only negroes; he could not be a juror or a judge; he could not use firearms without special permission, and even though he owned property and paid taxes, he could not vote or hold office. Half a man was he indeed!

If prejudice did not exist in the minds of the white inhabitants of Virginia against persons of the black race before the coming of the negro, it was not long in springing up after the two races met on American soil. This prejudice against the man of color was not on account of his servile condition however,—for in that respect he was on a par with a great number of whites. Conversely, therefore, freedom was not sufficient to make the negro servant or the negro slave the social equal of the white man. By the middle of the seventeenth century there were negroes who had been set free from all forms of legal servitude, but they were not absorbed into the mass of free population. Their color adhered to them in freedom as in servitude, and the indelible marks and characteristics of their race remained unchanged. Chastellux, in travelling through Virginia in 1783, noticed the inferior social status of this class and wrote: "In the present case, it is not only the slave that is beneath his master, it is the *negro* that is beneath the white man. No emancipation, no act of franchise will or ever can efface this distinction."

And so the negro was compelled to turn elsewhere than to the white man for social concourse. Outside of his own class, the most congenial companion of the free black was found among his kinsmen in bondage. The larger part of the free men of color met and mingled with negro slaves on a plane of almost perfect social equality. To the free man, there were lacking the better education, the higher standard of wants, and the greater opportunities of acquir-

ing wealth and position, necessary to supply an actual basis of superiority, and to give him a higher social rank than that occupied by the slave. And as for the so-called negro "aristocracy," we search in vain for such a classification based on the superiority of the free negroes over slaves or vice-versa,—but find that such distinction was founded rather on the ascendancy of the wealthy planter's "servants" over the "poor man's nigger."

Throughout the period of the colony when the number of free blacks was comparatively small,—and even in the nineteenth century before the active propagation of anti-slavery doctrines,—there existed little if any feeling against the education of this class. Few, 'tis true, had the opportunity or desire to take advantage of this privilege, yet when the agitation for the abolition of slavery became acute, and anti-slavery tracts and pamphlets were in wide circulation in the State, the friends of the institution of slavery became apprehensive of the evil which might result from the reading of such literature by the free negro,—and in consequence brought about legislation to prevent this class from acquiring a knowledge of books. In connection with this law, we cannot resist mentioning an amusing incident as gathered from the records of the Legislature. Some of the better class of freemen, not wishing their children to be totally deprived of learning, sought a means of sending them to the North for education, but complained to the Legislature about the inconvenience which this imposed, very thoughtfully adding that they preferred not sending them where "they might imbibe bad doctrines." The Legislature refused them the request for a school in Virginia, and with a finesse of tact quite surprising in such a body, attended in its own way to the danger of imbibing bad principles,—it withdrew from the negro even the privilege of educating his children beyond the limits of the State! No wonder, then, that quite generally throughout the two and a half centuries under review,

free negroes could merely make their mark in affixing their signatures to records of business or legal transactions.

There were in Virginia before 1665 many who condemned the free negro as being not only socially degraded but economically worthless. Fortunately, however, we may form an estimate of the value and merits of the free black as an economic factor from other and less biased sources. It should be remembered that, though repeatedly attempted, all efforts to remove him from Virginia failed utterly,—and the chief object in the way of those efforts was then, as at the present time, the demand for the labor of his class. Moreover, any conception that he was crushed in the scramble for employment between the slave and the white laborer may at the outset be dismissed. In fact, it was the latter class that suffered,—first because the black, on account of his standard of living, flourished on wages smaller than the white could accept and live, and second, because the free negro, being as a rule of an obedient, tractable disposition and respectful of personal authority, was more easily directed, and therefore a more desirable servant. An interesting side-light on the feelings of the white laborer in view of these conditions is shown by the following clipping from a letter written in 1845: “Those whose hearts are now sickened when they look into the carpenters’ shops, the blacksmiths’ shops and the shops of all the different trades in Richmond and see them crowded with negro workmen, are ready to quit in disgust.”\* The free negro had, it is certain, taken an important and permanent place in the economic life of Virginia.

While it is true that of free laborers of all kinds, the free negro was the best fitted to survive under the adverse conditions confronting him, and that he appropriated for himself the better share of employment open to free laborers, the fact remains that a proportionately large class of free blacks was without employment. The character of the negro, his natural propensities, and the result of legis-

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\*Richmond Whig, December 11, 1845.



lation itself, made it inevitable that a portion of this population should become vagabonds. It is to be regretted, however, that many contemporary critics judged the moral character of the free negro solely by that portion of his class which wandered through the State without work. In view of the various conflicting assertions, we are led to give credence to the recollections of respectable free negroes still living who insist on dividing this class on a moral as well as a social basis into two sections, the upper one of which was thoroughly respectable, law-abiding and prosperous; while to the lower element properly belongs the reputation of being associates and corrupters of slaves, and parasites on the community in which they lived. Persons of the former class were designated as "men of color," individuals of the latter as "free niggers." That the free negro class produced a rather disproportionate number of thieves should not be doubted, but that the free black was worse than the slave or that he was worse than so many whites would have been under similar circumstances is by no means proved. While not attempting to excuse him, still, in the words of Jefferson we well may say that "a man's moral sense must be unusually strong if slavery does not make of him a thief." And far from being of a turbulent and discontented disposition, as has been charged against him, the free negro "longed to be left alone in the place of his birth, free from fears of molestation and annoyance, to enjoy perfect content."\*

After surveying thus the conditions of the ante-bellum free negro in Virginia, the most striking thing of all seems to be the fact that his was termed "freedom,"—that he should have been considered a *free man*. For what of freedom had he? He was neither a citizen of the State nor of the United States; he supported the government by taxes and in the ranks of war, yet was refused suffrage and could not hold office; he could neither be a juror nor bear witness against a white man, yet was liable to every police

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\*Prof. T. R. Dew of William and Mary—"Essay on Slavery."

restriction of the law; he was "free," yet socially was forced to associate with servitude. Degraded as he was in morals, inclined by his environment toward criminality, still he was refused the privileges of education,—even religious gatherings being denied him time and time again. Hedged about by every restriction, shackled by the iron hand of prejudice, bearing the burdens yet refused the benefits of life,—the ante-bellum free negro merely existed, that was all. No wonder he was rated "Half a man."

**ANTE-BELLUM FUN IN OLD VIRGINIA.**



## ANTE-BELLUM FUN IN OLD VIRGINIA.

By Geo. H. Gilmer, Jr.—1916.

How many of us have seen cartoons picturing the joke editor with an expression on his face rivalling that of an angry tiger or other ferocious beast? How often are we led to think that the man who writes for our amusement is in his manner exceedingly glum and gloomy. On the other hand, if we have not been led to believe him to be very gruff as pictured by the cartoonists, we are apt to think of him as a fat, jovial little fellow with a continual smile on his face like Santa Claus. This latter view which is usually the first to enter our minds is, in some respects, as unsatisfactory as the former. Has not some one truly said, "Man, thou pendulum 'twixt a smile and a tear"? If this is truly the nature of man, if he is indeed made up of emotions half sweet and half sad, is it not appropriate that the humorist should be a being of like emotion? It is improbable that a man who never knew any of the bitter of life could well judge of the sweet. If it were not for the contrasts of life, it would indeed be a monotonous business. What then shall we look for in a humorist? Not a man made up altogether of smiles, never seeing the serious side of life, nor a man who sits at his desk during the day with a scowl on his face writing jokes for a living and sitting at home at night with the same scowl but never caring to brighten that home with his wit. Surely this is not what we would look for in our humorists. But we hope to find a man with a truly deep sympathy for the ills of human-kind, yet a man who can always look upon the bright side of life, a man bubbling over with fun, but with plenty of room left for the tenderest sympathy for the woes

of his fellow sufferers. Other nations and states have had such writers and it does our hearts good to read of them. Has Virginia, so famed for great leaders and great statesmen, produced no one who has had the Heaven-given gift for cheering the despairing soul? You may go to any other state in the Union and you will not find more genuine happiness than in the Old Dominion. Could a people blessed with such a beautiful land and so much that contributes to real joy help furnishing some to the vast number of the world's humorists?

Virginia has truly done her part in this line, not only in the past, but is doing so at present. Yet if we compare the present with the days just before the struggle for states' rights, there seems to be something lacking. We miss some of the real fun and joy that our grandfathers and great-grandfathers enjoyed. And we are never more aware of the fact that something has passed away than when we read of the good old ante-bellum days as pictured by Dr. George W. Bagby. Virginia, and the South as a matter of fact, can find no writer who more faithfully portrayed the life of his state than did Dr. Bagby. While he regarded all that was akin to suffering on the part of anyone with the deepest sympathy, there was within him that power for looking on the bright side of things and making the moments fly happily for all, which is one of the greatest blessings that man can possess. Were it not for him we would miss many a story of gladness from our Southern literature. Were it not for him much of the real joy of living in the ante-bellum days would be missed by us who have passed our lives without once experiencing the fun of living on an old Virginia Plantation. The person who has been fishing with Mozis Addums and Billy Ivins on the Appomattox, or who has not ridden with Mozis on the "cars" from "Fomville" to Richmond and Washington or ridden through the mountains of Southwest Virginia, swimming rivers, and skating on the James at Lynchburg, one who has not visited the home of the Old Virginia Gen-

tleman on his large plantation, has not by any means a complete education, and if he thinks that the present is in all respects more delightful to live in than the past, let him read and consider whether he may not be mistaken.

We may think that a seven mile spin in a Ford over a macadam road is a pleasure that can only be excelled by a longer spin in a Cadillac. But what about the drive from Farmville to Uncle Flatback's plantation over a muddy road in a carry-all which brushes the limbs of the pine trees as it sinks into the ruts? Who would ever call this dreary ride through pine forests a pleasure? Why, Mozis Addums of course, and you would too if you could ever try it. It is true that it is lonesome, but it is a grand lonesomeness and all the tall oaks and pines are there whispering to you. You have just as much time as you want to think of all that awaits you at the end of your journey. You drive for miles without seeing a sign of a house, yet you know that 'way back up in the woods there awaits your arrival the roomy old-fashioned (new-fashioned at the time you are taking the trip) plantation house surrounded by the negro cabins and other buildings. There are still the silent forests on either side of it. But it is not dead looking. There are signs of life everywhere about the house. In some of the cleared fields in front of it the negroes are reaping the wheat, for it is harvest time. There are no noisy reapers or binders in the field, but the swish-swish of the cradle as it passes through the grain may be accompanied by the songs of the reapers. Some of the boys may be in the field helping with the work or they may be on horses looking on. Everyone has something to do.

But we have not gone inside the house yet. It is a queer building, all patched up as if it had been built as the family grew, as indeed, it had. No two rooms have their floors on a level. You must either step up or step down or take the consequences of your failure to do so.

You may be met by some of the older boys (there are boys and girls from the ages of two to sixty living in the

house), and the negro driver will take the horse to the stable. If you are not too tired you might go hunting in the afternoon with the boys. There are no game laws and the broad fields and forests furnish a very nice place for birds and rabbits and even deer to live. When you come in at dark you are ready for the supper that has been prepared for you by the mother and her daughters. After supper you have a chance to learn something of the character of this mother and her daughters. The latter are full of fun and also full of sincerity and all that you could desire. It is not many days before you will have to guard your heart carefully if you wish to retain it whole. The short summer evenings seem all too short when you are pleasantly passing the time talking to the one whom you for some reason have grown to like best. At ten o'clock you are sent to sleep with other boys of your age in the Office and it is more than irritating when they insist upon talking about horses when you are simply crazy to think with yourself of that last look she gave you before she mounted the stairs. Loving then must have been different from what it is now. One could not complain about the high cost of living in those days and at the same time what joy it was. For you were spending a fortnight in the very house with her. And yet how terrible was the suspense when she would mischievously call you "smarty" when you told her about your love, only to give you a sweeter smile than ever that evening when she said good-night. You were held in rapturous suspense and all the time you were in the midst of the highest joy.

The mother had something about her that made her more to be admired even than her daughter. Such a quiet dignity and love has seldom since been seen in mothers outside of Virginia.

Uncle Flatback himself was a kind, jolly old gentleman. Others have often tried to portray the Old Virginia Gentleman, but few with the success of Dr. Bagby. The Virginia gentleman as seen by him is a quiet, yet spirited



man; courteous and gentle, and of a "humility born only, as my experience teaches, of a devout Christian spirit."

Can anyone read "The Old Virginia Gentleman" and deny that it was joy indeed to live in those days before the war. Trouble there was indeed, but with it was a spirit which triumphed over all sorrow and made life a blessing.

What about a little fishing trip with a congenial crowd on the Appomattox? Fishing in those days was not exactly what it is now. Then there was the stately old beech which hung out over the waters of the Appomattox and admired its own reflection. It had to have an abundance of roots to support its weight and these roots furnished an excellent nest for the fisherman. The party set out for this beech and after walking a few miles baited their hooks and cast them into the water. Everybody tries to keep quiet but Billy Ivins finds it impossible to do so. The disgraceful raid upon Virginia by John Brown is fresh in the minds of the fishermen and they spend some time in heartily consigning him and others to a fit place of abode. It seems to relieve them somewhat for with this off their minds they fish in quiet and the suckers, some twelve and some eighteen inches long, very obligingly bite well. At noon dinner is brought by someone from the plantation house. Such a day's fishing could not now be enjoyed when we are all too busy going into the towns or rushing through life as if our lives depended upon it.

In the letters of Mozis Addums to Billy Ivins we are made to laugh heartily at the travels of the unsophisticated countryman. Virginia people of the period just before the war could well appreciate broad farce. Can we read these letters and deny that the Ante-Bellum South had as keen a sense of humor as the Post-Bellum nation at large? In reading them one would be forced to admit that there was as much if not more "Sunshine" in the South as in the North during the same period. Those were the days when Virginians lived in leisure, not carried along by the swift, bustling spirit of present day Americans. If we

were given our choice as to whether we would live in our modern city or on the old plantation, there could be little choice. No one denies that there is fun in Virginia now, and fun in abundance, but there is a sadness connected with the passing of that quiet, peaceful fun that was formerly enjoyed on the Old Virginia Plantation in the days before Mars had left his blight upon the land. And we may say with one of her truest sons who appreciated the joy of living within her territory: "Virginia, our Mother, our own Mother, if we forget thee—if we ever forget thee—may our souls be forgotten of their God."













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